



## Office of the Independent Police Auditor

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**BARBARA ATTARD**

*Independent Police Auditor*

June 7, 2007

Honorable Mayor and Members of the City Council  
200 East Santa Clara Street  
San José, CA 95113

Dear Mayor Reed and Members of the City Council:

Enclosed is the Independent Police Auditor's (IPA) 2006 Year End Report submitted for your approval. This annual report details complaints received, closed, and audited during the 2006 calendar year, and provides an overview of the classification of cases, complainant and officer demographics, complaints by council district, and the multi-faceted community outreach program involving the IPA staff.

The three new policy recommendations presented are based on IPA examination of the complaint classification process and IPA audits of San José Police Department investigations of community-initiated complaints and other incidents. The recommendations focus primarily on creating objective criteria for the classification of complaints and strengthening the oversight mandate of the IPA. This report also provides updated information on past recommendations.

It will be an honor to appear before you to provide an overview of this report at the Special City Council Meeting scheduled for the evening of June 21, 2007. At that meeting several reports will be presented which discuss police related issues. I commend the Mayor and Council for setting a special meeting at which these reports and the recommendations contained therein can be presented in context and at which the public will be provided an opportunity to comment.

I would like to acknowledge Mayor Reed and the City Council for your continued support of the Office of the Independent Police Auditor and its duty to review investigations of police misconduct complaints, to conduct public outreach and to make recommendations. I want to acknowledge the members of the IPA staff and the IPA Advisory Committee for their support and assistance throughout the past year. On behalf of the IPA staff, I would also like to recognize and express appreciation of the San José Police Department, in particular the Internal Affairs Unit, for providing the office with the information needed to prepare this report and their ongoing cooperation.

I welcome your comments and will be available to answer questions or provide further explanations as requested.

Respectfully submitted,

Barbara Attard  
Independent Police Auditor

## INDEPENDENT POLICE AUDITOR & STAFF



Photograph courtesy of Erika Holmgren

**Barbara Attard, Police Auditor** – Ms. Attard was appointed as the Independent Police Auditor in January 2005. She is a licensed private investigator with civilian oversight experience spanning the last 24 years. She served as the director of the office of the Berkeley Police Review Commission for seven years before coming to San José. Her career in oversight began with the San Francisco Office of Citizen Complaints. Ms. Attard's previous professional experience includes working in employment and training with Friends Outside and with the San Francisco Sheriff's Department County Parole program. She earned her Bachelor's degree in Philosophy at Humboldt State University and a Masters in Public Administration at the University of San Francisco. Ms. Attard is the past president of the National Association of Civilian Oversight of Law Enforcement (NACOLE).

**Shivaun Nurre, Assistant Police Auditor** – Ms. Nurre was appointed to the position of Assistant Police Auditor in January 2007 after serving as the Interim Auditor for four months. She has ten years of public sector experience as a Deputy County Counsel for Santa Clara County. Her legal experience spans the areas of civil litigation, employment law, criminal justice and workers compensation. She obtained an undergraduate degree in history from the University of California at Riverside and then worked for several years at the Congressional Research Service within the Library of Congress before obtaining her Juris Doctor from the University of California at Davis.

**Suzan L. Stauffer, Complaint Examiner** – Ms. Stauffer has worked with the IPA for the past 3 years. She came to the IPA with more than 20 years of experience working in the criminal justice field. A Bay Area native, Ms. Stauffer earned a Bachelor of Arts degree from Stanford University and a Juris Doctor from the University of San Francisco. She served as a prosecuting attorney in California and Hawaii before coming to the City of San José. In 1993 Ms. Stauffer designed and implemented the award winning Safe Alternatives & Violence Education Program (SAVE) for the City of San José and remains committed to making a difference in the community.

**Vivian D. Do, Data Analyst** – Ms. Do joined the IPA from the private sector with specialized experience in information technology. Ms. Do enjoys the working environment at the IPA where she can focus her technical skills on computer and technology related needs, including data analysis, database management and desktop publishing. Her skills are an integral part of the process of producing the IPA annual reports. Ms. Do earned a Bachelor of Science degree from San José State University, California.



## INDEPENDENT POLICE AUDITOR & STAFF



IPA Staff

Photo from left to right: Jessica Flores, Barbara Attard, Suzan Stauffer, Vivian Do, Diane Doolan and Shivaun Nurre.

**Diane M. Doolan, Public Relations & Education Specialist** – Ms. Doolan joined the Office of the IPA in March of 2006. She has over ten years of experience advocating for individuals who have physical, mental and developmental disabilities. Ms. Doolan is a former Vice-President of the California Coalition of Mental Health Patients' Rights Advocates and a former instructor in the Crisis Intervention Training Academy of the San José Police Department. She earned her Juris Doctor from the University of California Hastings College of Law. Her Bachelor's degree was obtained in her state of origin, from Southern Connecticut State University.

**Jessica Flores, Office Manager** – Ms. Flores joined the IPA office in June of 2006. She attended Administrative Assistance classes at West Valley College and uses that training as the front lobby receptionist. She greets visitors, answers questions for complainants, and directs them to appropriate sources. She enters case information on databases, creates and maintains case files, and helps where ever needed.

**Steve Wing, Former Assistant Police Auditor** – Mr. Wing worked with the IPA for five years. During 2006, Mr. Wing returned to the Department of Public Works - Equality Assurance as a Senior Analyst. He is also the Americans with Disabilities Act Coordinator for the City of San José.

# INDEPENDENT POLICE AUDITOR ADVISORY COMMITTEE

## Mission

The Mission of the Independent Police Auditor Advisory Committee (IPAAC) is to assist the Office of the Independent Police Auditor by providing information on ways to improve the police complaint process, by promoting public awareness of a person's right to file a complaint, and by increasing the accountability of the San José Police Department to the public.

## Purpose and Objectives

The purpose of the IPAAC is to identify, mobilize, and coordinate resources in order to assure maximum public, private, agency, and individual commitment to effective police oversight.

The objectives are to:

1. Promote the mission of the IPA and inform the IPA of the needs, problems, and/or issues that surface in various communities.
2. Promote high standards of quality police service and civilian oversight in the City of San José.
3. Increase the visibility of the IPA through support of community events and public forums.

## Participation

Participation is exclusive to those individuals selected by the Independent Police Auditor and who reside, do business, or have significant human interest in police oversight for the City of San José or neighboring communities. The IPA convenes meetings of the IPAAC on an average of three (3) times per year.

### *In Memoriam*

This report is dedicated to the memory of Gertrude Welch, a tireless activist and longtime supporter of civilian oversight of law enforcement.

Ms. Welch, a former IPAAC member, passed away earlier this year. Her spirit, vigilance and concern for human rights will be sorely missed.

## Independent Police Advisory Committee Members

**Tony Alexander**, Silicon Valley African American Democratic Coalition (1999-present)

**Robert Bailey**, San José Human Rights Commission (2002-2006)

**Rick Callender**, NAACP of San José/Silicon Valley (2001-present)

**Linda Young Colar**, San José Human Rights Commission (new member, 2007)

**Bob Dhillon**, Sikh Gurdwara - San José (1999-present)

**Minh Steven Dovan**, Attorney (1999-2006)

**Jeffrey Dunn**, Santa Clara County Office of the Public Defender (2006-present)

**Larry Estrada**, Santa Clara County La Raza Lawyers (2000-present)

**Nancy S. Freeman, Ph.D.**, Former Juvenile Justice Commission Member (2005-present)



IPAAC member Alfredo Villaseñor speaks to press at IPA news conference.





## INDEPENDENT POLICE AUDITOR ADVISORY COMMITTEE



**Josué García**, Santa Clara & San Benito Counties Building and Construction Trades Council (2004–present)

**Victor Garza**, La Raza Roundtable (1999–present)

**Helen Hayashi**, San José Downtown Association (2006)

**Christopher Henderson**, Student – San José State University (new member, 2007)

**Ashu Kalra**, Santa Clara County Office of the Public Defender (new member, 2007)

**Aila Malik**, Fresh Lifelines for Youth (new member, 2007)

**Sundust Martinez**, Indigenous Peoples Council, Native Voice TV (2004–present)

**Socorro Reyes McCord**, Community Peace & Justice Advocate (new member, 2007)

**Sofía Mendoza**, Community Child Care Council (1999–present)

**Reverend Jeff Moore**, True Vine Baptist Church, East Side Union High School District Liaison (2005–present)

**Helal Omeira**, Council on American–Islamic Relations (2001–2006)

**Aejaie Sellers**, Billy DeFrank LGBT Community Center (2006–present)

**Merylee Shelton**, San José City College (1999–present)

**Wiggys Siversten**, San José State University (1999–present)

**Patrick J. Soricone**, United Way of Silicon Valley (2004–present)

**Jennifer Tait**, Friends Outside National Organization (2004–2006)

**Alfredo Villaseñor**, Community Child Care Council of Santa Clara County (2001–present)

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## EXECUTIVE SUMMARY

### Chapter One: The Office of the Independent Police Auditor

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This report covers the calendar year 2006, a period of accomplishment for the Office of the Independent Police Auditor (IPA). Under the leadership of police auditor Barbara Attard, the IPA exceeded goals in terms of community outreach events and in the number of audits of complaint investigations.

The Office of the Independent Police Auditor was established over thirteen years ago through action of the San José Mayor and City Council. The IPA, in cooperation with the San José Police Department (SJPd), serves to assure the residents of San José that there is a fair and thorough process available to address community concerns and investigate citizen complaints of police misconduct.

The IPA has five primary functions: (1) to provide an alternate location where people may file complaints, (2) to monitor and audit investigations conducted by the SJPd Internal Affairs Unit (IA), (3) to promote public awareness of the complaint process, (4) to make recommendations to enhance and improve SJPd policies and procedures, and (5) to respond to the scene and review officer-involved shooting investigations.

The IPA prepares reports for the City Council semi-annually, providing analysis of complaints received and closed, analysis of visible trends, and discussions of new and past recommendations. Pursuant to the requirements of San José Municipal Code Section 8.04.010(D), this Year End Report presents the findings for the 2006 calendar year and includes several substantive policy recommendations.

### Chapter Two: Policy Recommendations

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This year's annual report details three new policy recommendations that resulted from examination of the complaint classification process and SJPd investigations of citizen-initiated complaints and other incidents.

#### I. New Recommendations

##### 1. That the Mayor and City Council:

- a. **Direct the City Manager to direct the SJPd to implement a complaint process which utilizes objective criteria for complaint classification in collaboration with the IPA.**
- b. **Grant the IPA concurrent authority over the classification of complaints.**

The IPA recommends changes to the complaint classification process to institute classifications based upon objective criteria and the nature of the complaint. The classification process impacts not only the complaint and oversight process, but also the SJPd complaint intervention program, discovery in criminal cases, and risk management. The current classification process needs improvement; the definitions are too subjective, many matters of misconduct that merit investigation are not investigated, and attempts by the IPA to reclassify cases have not been effective. The IPA proposes that a revised complaint process be developed to ensure that classification is more logical, rational, objective and consistent.



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### 2. That the Mayor and City Council:

- a. **Direct the City Manager to direct the SJPd to conduct administrative investigations in all critical incidents in which an officer's use of force or any other department action results in death or serious bodily injury.**
- b. **Mandate that the IPA review the administrative investigation in all such critical incidents.**

Use of force cases and other critical incidents resulting in death or serious injury can have an impact on the community similar to that resulting from an officer-involved shooting and are therefore of paramount importance. Currently, the IPA's authority to review such matters is limited to those incidents in which an officer's use of a firearm caused death or injury. The IPA recommends that critical incidents resulting in death or serious bodily injury be examined by the Department via an administrative investigation similar to that conducted after an officer-involved shooting incident and that the administrative investigation be reviewed by the IPA.

### 3. That the Mayor and City Council consider granting the IPA specific limited authority to investigate. Exercise of such authority would be limited to:

- a. **Investigation of community-initiated complaints which IA did not investigate;**
- b. **Investigation of critical incidents in which any SJPd action resulted in death or serious bodily injury and the SJPd did not conduct an administrative investigation;**
- c. **Investigations of complaints or critical incidents that are deemed by the IPA to be incomplete.**

Examination of citizen-initiated complaint investigations over the last two years and recent critical incidents resulting in death or serious injury revealed that there were matters that the SJPd and/or IA did not investigate and that some investigations lacked sufficient evidence upon which to render findings. This recommendation, to mandate the IPA have limited investigative authority, is made as an important addition to ensure an investigation in cases in which SJPd declines to investigate misconduct complaints, critical incidents which result in death or serious injury, or in cases in which the investigation is deemed by the IPA to lack sufficient evidence upon which to render findings. The use of such authority would be narrowly tailored and triggered only under limited circumstances. Although the IPA anticipates that the exercise of such investigative authority would be used infrequently, it is nonetheless important to have such authority to remedy inadequacies in closed investigations or to conduct an investigation in circumstances which militate for examination and oversight.

## II. Updates to Prior Recommendations

### A. Establishment of an Expanded Shooting at Vehicles Policy

In the 2005 Year End Report the IPA recommended that the SJPd consider establishing an expanded Shooting at Vehicles policy. In April 2007 the SJPd revised the SJPd Duty Manual incorporating many of the provisions of the IPA recommendations.

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### B. Updates to the San José Municipal Code to Reflect Previous Council Action

In 1999, the City Council adopted Municipal Code Section 8.04.010(B) that provided that the police auditor shall participate in the police department's review of officer-involved shootings. In 2004 and 2006, the City Council adopted recommendations which granted IPA delineated authority in officer-involved shootings and in-custody deaths; however, the Municipal Code has not been updated to reflect such action. The IPA recommends that the Municipal Code accurately reflect the IPA participation in such events, namely IA notification to the IPA of an officer-involved shooting, IPA authority to respond to the crime scene for briefing by on-scene personnel, IPA receipt of the IA investigation document for audit purposes, and IPA receipt of homicide reports for officer-involved shooting and in-custody death incidents.

### Chapter Three: The Complaint Process and Year End Statistics

This chapter discusses the IPA's involvement in the complaint process, including complaint intake, monitoring the investigation, and auditing completed Internal Affairs (IA) reports. Information about the types of cases received in 2006 by both IA and the IPA, the classification of cases, findings reached by IA, officer discipline, and the audit process, is detailed and analyzed.

In 2006 a total of 478 internal and community complaints were filed. The number of complaints has risen over the past three years. Despite the rise in complaints, there has been a decrease in cases classified as formal, those receiving the highest level of investigation, from 111, 33% of complaints received in 2004, to 107, 24% of complaints received in 2006. There has been a rise in cases classified as inquiries and informal investigation classifications during this period. Of the 444 external/citizen-initiated complaints filed in 2006, 52%, 233 complaints containing 318 allegations were classified as inquiries. In complaints classified as inquiries officer names are removed and not tracked, and there is minimal investigation of the complaint allegations. The use of the procedural classification has increased since 2004, from 32 cases, 10% of cases received in 2004 to 76 cases, 17% of cases received in 2006. In procedural cases it is determined in advance that there is no officer misconduct and officers are not interviewed.

The IPA monitors the classification and the progress of complaint investigations, and audits the findings and conclusions reached by IA. The IPA audited all unnecessary force cases and approximately 97% of the external complaints closed, including inquiry complaints. Of the 132 investigated complaints audited, the IPA concurred with the findings in 84 cases, 64%. Further action was requested on 29 cases, 22%, before the investigation was closed. The IPA disagreed with the finding in 19 cases, 14%. Of the 214 inquiry cases audited, the IPA agreed with the classification of 26%, 56 cases, and disagreed with the classification in 55%, 118 cases; 40 cases contained insufficient information to make a determination. **Chapter Three** provides a synopsis of five cases in which the IPA disagreed with the IA classification, investigation or findings.

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### Chapter Four: Use of Force Analysis

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This chapter provides information and data concerning complaints alleging that San José police officers used unnecessary force (UF) and information about officer-involved shooting and critical incidents. In 2006 there were 72 unnecessary force formal/informal complaints and 25 unnecessary force complaints closed as inquiries.

In 2006 there were three officer-involved shooting cases, one of which resulted in a fatality. There were two fatal critical incidents in 2006 that involved SJPd officers. The IPA is unable to report whether the conduct of the involved officers was within policy because the IPA currently has no jurisdiction and no ability to review the reports regarding those incidents. The IPA has formulated a recommendation regarding the investigation of such critical incidents.

### Chapter Five: Subject Officer Demographics

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Information about officers receiving complaints is presented in this chapter. In 2006, 217 of 1,335 SJPd officers were named in complaints. Of the 217 total officers named, 177 were named in one complaint, 35 were named in two complaints, and five were named in three complaints.

Officers with two to four years of experience continue to be named in the highest number of complaints when compared to their representation in the Department. Officers in the two to four year range make up 7% of all officers in the SJPd; however they accounted for 12% of all officers named in complaints filed in 2006. Officers with seven to ten years of experience comprised 25% of officers named in complaints and represent 19% of officers in the Department.

### Chapter Six: Complainant Demographics

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Chapter six provides a summary of demographic information collected about complainants in 2006 during complaint intake, as well as through voluntary surveys. Males filed 62% of all complaints in 2006 while females filed 38%. Hispanic complainants filed the greatest number of complaints at 42%, followed by white complainants at 27%, and African Americans at 18%. African American and Hispanic complainants filed complaints at higher rates than their representation in the San José community.

### Chapter Seven: Community Outreach

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Outreach to the community is a mandated function of the Office of the Independent Police Auditor. Awareness of the complaint process is critical to raising public confidence in both the police department and the office of the IPA. Outreach events have kept the IPA informed of issues important to the residents of San José. Through outreach, presentations, and meetings, the IPA and staff participated in 220 events in 2006 and reached more than 7,000 people. The IPA has prioritized outreach to vulnerable populations such as youth, immigrants, and ethnic minority communities. Of the 220 outreach events the IPA participated in during 2006, 36% involved the priority populations.

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A community forum sponsored by the IPA and the San José Human Rights Commission (HRC) was held in November of 2006. Approximately 250 people attended the forum and 45 individuals offered testimony. A second forum was held in January 2007. The topics addressed most frequently at the forums were: the need for improved officer communication skills, disrespectful and discourteous behavior community members associate with the SJPd, the existence of racial profiling, and the ineffectiveness of the existing complaint process.

The San José IPA continues to receive national and international recognition. In 2006, IPA Barbara Attard served as the President of the National Association for Civilian Oversight of Law Enforcement (NACOLE) Board of Directors and helped spearhead a project to develop standards for civilian oversight professionals. The IPA is hosting the NACOLE conference in San José September 25-28, 2007; oversight professionals from throughout the United States and international practitioners are expected to attend.

### **Chapter Eight: Cases By Council District**

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This chapter provides a discussion of complaints and allegations by the council district in which they occurred. District 3, which includes the downtown area, continues to generate the largest number of complaints. Complaints across the remainder of the city appear to be fairly equally divided. This chapter provides a comparative five-year analysis of all cases received identified by Council District, and information on the breakdown of unnecessary force complaints.

### **Conclusion**

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The mission of the IPA is to ensure that SJPd complaint investigations are thorough, objective and fair. In furtherance of that mission, in 2006, the IPA continued its efforts to analyze the complaint classification and the investigation process and has formulated recommendations to improve the complaint process. Under the direction of Barbara Attard, the IPA staff will continue to reach out to San José residents to promote community confidence in the SJPd, in the IPA and in San José City government.



# THE OFFICE OF THE INDEPENDENT POLICE AUDITOR

## I. IPA 2006: Introduction

2006 was a year of accomplishment for the Office of the Independent Police Auditor (IPA). Involvement in outreach events increased; outreach to youth and minority/immigrant populations exceeded goals, and the year closed out with a well attended community forum. The IPA exceeded goals in audits of complaint investigations as well.

The Office of the Independent Police Auditor was established over thirteen years ago through action of the San José Mayor and City Council. The Council reviewed information and heard testimony from community members, professionals in oversight, activists, and law enforcement before establishing the auditor model of oversight to reach out to the diverse San José community and to help enhance police/community relations.

In San José the IPA was established to audit the Internal Affairs investigations of misconduct complaints. In the thirteen years since the IPA was established, the auditor model has evolved in other jurisdictions in a variety of ways. This report discusses policy reasons to update the IPA mandate. Policy concerns and recommendations for improving the complaint process and strengthening the IPA are discussed in **Chapter 2**.

This year-end report covers the period of January 1 to December 31, 2006. The report details complaints received, closed, and audited during the year, and discusses trends in the classification of cases, officer demographics, complaints by council district, and an overview of the multi-faceted community outreach events involving the IPA.

## II. Establishment of the Office of the Independent Police Auditor

The San José City Council passed the ordinance to establish the Office of the Independent Police Auditor in 1993. The IPA was created to provide civilian oversight of the citizen complaint process and to make recommendations to improve San José Police Department (SYPD) policies. In response to a grassroots effort to establish oversight in San José, and increased awareness following the Rodney King incident, the City Council took a

# Chapter One

# CHAPTER ONE | THE OFFICE OF THE INDEPENDENT POLICE AUDITOR

unique approach to oversight and established the Office of the Independent Police Auditor.

In 1996, San José residents voted to amend the City Charter to make the IPA a permanent branch of city government. The change to the City Charter also directed the City Council to appoint the police auditor to serve four-year terms and established that the midterm removal of the police auditor requires a vote of approval of at least ten of the eleven City Council members. See **Appendix A** for the complete San José Charter Section 809.

## III. Independence of the Police Auditor

The IPA is established as an independent body as set forth in Title 8 of the San José Municipal Code, Section 8.04.020, A and B:

- The Police Auditor shall, at all times, be totally independent, and requests for further investigations, recommendations, and reports shall reflect the views of the Police Auditor alone.
- No person shall attempt to undermine the independence of the Police Auditor in the performance of the duties and responsibilities set forth in Section 8.04.010.

See **Appendix A** for the complete San José Municipal Code, Section 8.04.

## IV. Reporting Requirements

IPA reports are prepared on a semi-annual basis pursuant to the requirements of the San José Municipal Code Section 8.04.010 (D). This section states that the report of the IPA shall:

- Include a statistical analysis documenting the number of complaints by category, the number of complaints sustained, and the actions taken.
- Analyze trends and patterns.
- Make policy recommendations.

## V. Functions of the Independent Police Auditor

The mission of the IPA is to provide independent review of the citizen complaint process, thereby ensuring increased accountability by the San José Police Department. The primary functions of the IPA are:

- To serve as an alternative location for citizens to file a complaint against a San José police officer;
- To monitor and audit SJPD complaint investigations to ensure they are thorough, objective, and fair;
- To conduct community outreach and provide information about the services the office provides to the community;
- To make recommendations to enhance and improve policies and procedures of the SJPD;
- To respond to the scene of and review officer-involved shooting investigations.

### CIVILIAN OVERSIGHT OF LAW ENFORCEMENT

Civilian oversight is a term of art used to describe practitioners and professionals who have authority to oversee, on a defined level, police conduct in their communities. There are a variety of models of oversight, the main categories fall within three basic types: Auditor/Monitor, Civilian Review Boards, and Investigative models; there are also hybrids that combine characteristics of the basic models. The terms oversight and civilian oversight as used in this report refer to the field of civilian oversight.

The National Association of Civilian Oversight of Law Enforcement (NACOLE) is the professional organization for oversight of law enforcement in the United States. For more information about this growing field visit the NACOLE website: [www.nacole.org](http://www.nacole.org).



**T**he approach of this report and the breadth of the policy recommendations contained within differ from annual reports of previous years. The change reflects the IPA determination that the current complaint process and IPA authority in oversight need strengthening. Issues discussed in this chapter and documented throughout the report, indicate that the present system fails to adequately investigate many citizen complaints, provides only limited risk management tools, and does not allow effective independent oversight of police action which warrants scrutiny.

### **I. New Recommendations**

The IPA is making the following new policy recommendations:

- 1. That the Mayor and City Council:**
  - a. Direct the City Manager to direct the SJPD to implement a complaint process which utilizes objective criteria for complaint classification in collaboration with the IPA.**
  - b. Grant the IPA concurrent authority over the classification of complaints.**
- 2. That the Mayor and City Council:**
  - a. Direct the City Manager to direct the SJPD to conduct administrative investigations in all critical incidents in which an officer's use of force or any other department action results in death or serious bodily injury.**
  - b. Mandate that the IPA review the administrative investigation in all such critical incidents.**
- 3. That the Mayor and City Council consider granting the IPA specific limited authority to investigate. Exercise of such authority would be limited to:**
  - a. Investigation of community-initiated complaints which IA did not investigate;**
  - b. Investigation of critical incidents in which any SJPD action resulted in death or serious bodily injury and the SJPD did not conduct an administrative investigation;**
  - c. Investigations of complaints or critical incidents that are deemed by the IPA to be incomplete.**

# Chapter Two

In 1993 the City of San José established the IPA, one of the first “auditor” models of oversight in the United States. For nearly 14 years the IPA has fulfilled its mandate, bringing forth significant SJPd policy recommendations, providing detailed reports on misconduct investigations, findings, and trends, as well as conducting extensive outreach to the community. Throughout the history of the IPA, periodic recommendations have been made to strengthen the review process. However, problems persist which require a more systemic remedy.

### 1. Classification of Complaints

Of immediate urgency is the classification of complaints. When a citizen contacts Internal Affairs (IA) or the IPA with a complaint, that complaint is classified into one of several categories. The current classification process is based upon complaint definitions which do not enumerate objective criteria for complaint classification. As a result, a large number of complaints have been classified as inquiries, and closed with minimal investigation and no tracking of officer misconduct. This classification issue impacts not only the complaint and oversight process, but also the SJPd early intervention program, discovery in criminal cases (*Pitress* motions), and risk management. The process by which complaints are classified has three primary weaknesses: the classification definitions are subjective, classifications can be misused, and the IPA lacks substantive authority to challenge classifications, particularly at the outset of the investigation.

### Background on classification of complaints

#### Inquiry Complaint Classification

An “inquiry” is one of the current classifications. SJPd defines an inquiry as: “. . . a complaint that is immediately resolved by an intake officer to the satisfaction of the citizen, without requiring a more extensive investigation. An inquiry that is not immediately resolved to the citizen’s satisfaction can be reclassified and be fully investigated.”<sup>1</sup> This definition is subjective and relies entirely upon the assessment of the intake officer and the subject officer’s supervisor.<sup>2</sup> This process is unsatisfactory because:

- Misconduct allegations can be classified as inquiry. Currently, the intake officer can classify any complaint as an inquiry, regardless of the seriousness of the incident.
- There is minimal investigation of the underlying facts of the incident. Some investigation should be conducted into all cases in which a citizen makes a complaint about officer misconduct to verify facts and to ensure discipline issues are addressed.
- Officer names are not tracked, thus undermining the ability of the SJPd to identify potential officer misconduct patterns and address behavior problems proactively, before an issue becomes more serious.
- As currently applied, the inquiry classification is used for many cases which do not fall within the above-stated inquiry definition.<sup>3</sup>

<sup>1</sup> Complainants are informed that they have up to a year to contact IA to reclassify the complaint. Complainants may agree with the inquiry classification, but it is not clear that they fully understand the impact of the classification, i.e. that the officer’s name will be removed and the complaint will not be maintained in the officer’s record.

<sup>2</sup> Typically when a citizen makes a complaint about an officer, the IA officer asks whether the citizen would like to speak with the subject officer’s supervisor. In some cases the IA documentation does not reflect that the supervisor was asked to call and discuss the matter with the complainant. Unlike other complaint classifications, the interview of the complainant by the IA investigators (and subsequently the officers’ supervisors) are not recorded.

<sup>3</sup> In many cases, a “pre-class” complaint is classified and closed as an inquiry when the IA officer cannot reach the citizen for information, regardless of the nature of the complaint or the complainant’s agreement to go with the inquiry classification. In other cases, there is no indication whether the supervisor actually talked to the citizen who called to complain. In some cases, the IPA contacted the complainants who stated that they were not satisfied with the inquiry process. After a dissatisfactory intake process with IA many complainants have been reluctant to re-contact IA to request a formal investigation of their complaints.



## CHAPTER TWO | POLICY RECOMMENDATIONS

The use of the inquiry classification for cases in which the complainant has questions about an incident and does not want to register a misconduct complaint is a sound, necessary practice to ensure proper allocation of resources in IA. However, the IPA audit of inquiries over the last two years has revealed that large numbers of complaints which contained misconduct issues were classified as inquiries. In 2004, 35% of all cases received were classified as inquiry; in 2005 and 2006, respectively, 53% and 52%, of all cases received were classified as inquiry. With more than half of all cases filed in the last two years classified as inquiry, there is a clear need to revise the classification process.

### The “Procedure” Classification

The increased use of the “procedure” classification has also raised concerns. In a complaint classified as procedure there is a pre-determination by Internal Affairs that the officer engaged in no misconduct. There is no interview of the subject officer in investigations of complaints classified as procedure. The use of this classification is a satisfactory practice in cases in which “it can be determined in advance that the subject officer acted reasonably and within Department policy and procedure...” in keeping within the Internal Affairs Unit Guidelines. However, during the past year the use of the procedure classification has increased and has been challenged by the IPA in cases in which there were misconduct issues that warranted an officer interview. This process raises concerns about the thoroughness of investigations of alleged misconduct and the appearance of potential bias in favor of the subject officers. The procedure classification is acceptable in cases in which there is merely an alleged violation of a department policy or procedure; however the procedure classification

has been increasingly used in cases that have multiple alleged misconduct issues.<sup>4</sup>

### Requests to Change Classifications

A matter which compounds IPA concerns about the classification process has been the inability of the IPA to effect classification changes early in the investigation process. Once Internal Affairs classifies a complaint the IPA has little effective authority to challenge that classification. Requests to reclassify complaints early in the investigation process have received the response from IA that the IPA must wait until the investigation is completed. At the completion of the investigation there is often little time to challenge the classification; even in cases in which the reclassification request has been granted there is often insufficient time (within the statutory limits) to comply with the change. Thus the IPA is currently unable to reclassify complaints which may contain serious misconduct into a classification which receives a full and formal investigation.

### History of the Classification Issue in IPA Reports

Since the inception of the office the IPA has documented concerns about the classification of complaints. In its first quarterly report in 1993, the IPA recommended that less formal classifications not be used in cases in which the complainant alleged misconduct. This report also advocated that an Internal Affairs officer, when faced with a close call regarding classifying a complaint into a category which entails a lesser or more formal complaint, should choose “the most careful and thorough path, make the complaint formal, and have it appropriately investigated as a misconduct complaint.”

<sup>4</sup>In response to IPA recommendations in the first quarterly report in 1993 the SJPd stated, “Should a citizen request a formal investigation, the Intake Officer must determine if the complaint contains allegations of misconduct or is a complaint specific to procedure. Should the facts of the citizen’s statement contain allegations of misconduct, the complaint is investigated as a Misconduct Complaint. Should the complaint pertain only to procedure, the case would be closed as a procedure complaint.” In 1993 it was clear that the “procedure” classification would only be used regarding a complaint specific to procedure.

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In the 1996 Mid-Year Report the IPA raised concerns about the complaint classification process, this time focusing on the accuracy of allegations. Specifically the IPA stated some issues of racial discrimination were documented as rude conduct allegations instead of the appropriate discrimination/harassment allegations.

In the 2005 Year End Report the IPA again raised concerns about the classification of complaints, noting that more than half of all cases initiated by citizens that year were classified as inquiries. In the 2006 Mid-Year Report the IPA scrutinized in more detail the problems with complaint classifications, particularly the overuse of the inquiry and the procedural classifications.

### Recommendation on Classification

There are numerous concerns about the classification process which are outlined in this report.<sup>5</sup> In sum, the current process is not working. The classification process as currently framed is too subjective, many matters of misconduct that merit investigation are not investigated, and the ability of the IPA to reclassify has not been effective. Measures should be taken to ensure that all complaints are provided an appropriate level of investigation. The classification of complaints which contain serious misconduct allegations should be logical, rational, objective, consistent and transparent. The classification issue has been a recurrent problem since 1993, one that has evaded a lasting solution. The IPA recommends that the classification process be revised to resolve these issues.

The IPA suggests that the IPA and IA develop a revised complaint process that includes:

- A complaint classification process that determines classification based upon objective criteria and definitions for complaint categories.

- A package of intake materials to be given to complainants at both agencies that would include complaint definitions, an explanation of the process, and necessary forms.
- A standardized script explaining the inquiry process to be read by IA and IPA staff to complainants who choose the inquiry classification at the time of intake.
- Joint training of IA and IPA intake and investigative staff conducted by the IA commander and the IPA on a yearly basis.
- A mediation program as an alternative process for minor complaints that would use outside, impartial mediators.
- Shared and concurrent authority by IA and IPA over complaint classification.

This recommendation has been developed as a solution to problems that the IPA has documented regarding the complaint classification process and after reviewing the systems in place in other agencies for classification of complaints. The authority contained in the mandate of the San José IPA does not reflect the level of authority granted to more recently implemented auditor/monitor models of oversight established in other cities in which the auditor/monitor has a systemic role and authority in the classification of investigated cases. See page 16, **Comparison of Mandates of Auditor/Monitor Oversight Agencies.**

Thus the IPA recommends the following:

1. **That the Mayor and City Council:**
  - a. **Direct the City Manager to direct the SJPd to implement a complaint process which utilizes objective criteria for complaint classification in collaboration with the IPA.**
  - b. **Grant the IPA concurrent authority over the classification of complaints.**

<sup>5</sup>See the textbox, “**Classification is Key**” at page 27.

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**Jurisdictional Authority:** The City Charter and Municipal Code are silent on the subject of IPA authority in the classification of cases. Under current pattern and practice the IPA has the ability to classify cases as citizen contact, inquiry, or “pre-classification.”<sup>6</sup> A Charter amendment and Meet and Confer with the San José Police Officer’s Association would be needed to grant the IPA authority to classify complaints.

**Fiscal Impact:** The fiscal impact of this recommendation is not clear at this time; increased investigations of complaints could result in increased staffing needs at IA or the IPA.

### 2. Investigation of Critical Incidents

The IPA recommends that the SJPD be required to investigate critical incidents in which an officer’s use of force or any other Department action results in death or serious bodily injury.<sup>7</sup> The recommendation proposes that the investigation procedure required for any and all department actions resulting in death or serious bodily injury be similar to that of the administrative investigation conducted after an officer-involved shooting incident. The investigation need not be initiated by a citizen complaint or be disciplinary in nature, but would focus on whether the police action was conducted in accordance with Department policies and procedures. The investigation would be reviewed by the IPA.

### Background on Critical Incidents

Non-firearm use of force cases resulting in death or serious injury can have an impact on the community, similar to that resulting from an officer-involved shooting, and are therefore of paramount importance. It is vital for the employing agency to investigate whether the force used in such cases was warranted and justified, and whether Department procedures were followed.

The Santa Clara County Police Chief’s Association readily acknowledges the critical issues that arise from officer conduct which results in death or serious injury. As stated in the Santa Clara County Police Chief’s Association Guidelines, “The potential social, civil, administrative and criminal consequences of Officer-Involved Incidents are profound and affect many parties.” July 2002 Officer-Involved Incident Guidelines. Although these guidelines do not enumerate a specific protocol, the central principle is that investigation of such incidents be thorough, credible, and free from conflicts-of-interest. The SJPD joined in the adoption of these guidelines in July 2002.

### Actions Resulting in Death or Serious Injury and Scope of Department Action

Currently the SJPD Duty Manual specifies that the Internal Affairs Unit will respond to incidents involving the death of an individual resulting from a police action, or the death of a subject in police custody. However, the IA unit is charged merely with observing the investigation, determining policy adherence, and reporting observations to the Chief of Police. No internal investigation is mandated by SJPD policy except when the death arises from an officer-involved shooting. At this time the IPA has authority to respond to the scene

<sup>6</sup> Cases classified as “pre-classification” by the IPA or IA at intake are later classified by Internal Affairs into a classification that will determine the level of investigation the case will receive.

<sup>7</sup> Serious bodily injury means an injury which results in permanent physical impairment, significant disfigurement or protracted loss of normal functioning. It includes, but is not limited to major bone fractures, the severing of limbs or extremities, and wounds involving damage to internal organs.

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and review the investigations only in officer-involved shooting incidents.

The IPA recommendation proposes implementation of an administrative investigation and subsequent IPA review of all use of force incidents and incidents involving a Department action that result in death or serious injury.

Any citizen death resulting from an officer's use of force or other Department action warrants an administrative investigation. In fatal incidents the location of the death, whether in police custody, at a hospital or at another location, should not abrogate the professional and ethical responsibility of the Department or the City to determine the underlying facts of the incident. The use of force by an officer which results in serious injury should not escape scrutiny merely because the injury was not fatal; however, under current policy, such conduct would elude administrative review unless a firearm was used or a complaint was filed.

### Review of Administrative Investigation by the IPA

The IPA should be mandated to review the completed administrative investigation in all critical incidents in which an officer's action resulted in a death or serious injury. Such review is consistent with the current duties of the IPA to monitor and review fatal and non-fatal officer-involved shootings. Current policy does not mandate or authorize the IPA to review any death case unless the death resulted from an officer's use of a firearm.

It is important that the role of the IPA in ensuring public confidence not be unduly circumscribed to deaths/injuries arising solely from an officer's use

of a firearm. Review of the administrative investigation will provide the IPA with the valuable information needed to report back to Council whether the incident was conducted according to SJPd procedure and to assess whether changes should be proposed to SJPd policies. Such IPA oversight will increase community confidence in the investigation of such cases. Moreover, many other civilian oversight agencies that have authority to review officer-involved shooting incidents also have the authority to review incidents involving death/serious injury.<sup>8</sup>

Recent critical incidents which have prompted the IPA's recommendation are described in the text box on page 14. These cases exemplify fact patterns that could reoccur, yet evade substantive internal review by the SJPd, and subsequent IPA audit. If the conduct of the officer resulted in or contributed to death/serious injury, an investigation should be conducted. The conduct warrants scrutiny whether or not separate, non-departmental circumstances also contributed to death/serious injury.

### Recommendation on Critical Incidents

The IPA recommends that the following steps be implemented:

- 2. That the Mayor and City Council:**
  - a. Direct the City Manager to direct the SJPd to conduct administrative investigations in all critical incidents in which an officer's use of force or any other department action results in death or serious bodily injury.**
  - b. Mandate that the IPA review the administrative investigation in all such critical incidents.**

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<sup>8</sup> Examples are: San Diego Citizen's Law Enforcement Review Board, the Office of the Inspector General Los Angeles Police Department, Boise Ombudsman, and Denver Police Monitor. See also: **Comparison of Mandates of Auditor/Monitor Oversight Agencies** on page 16.



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Jurisdictional Authority: Council direction to conduct an administrative investigation in critical incidents would be a policy decision.

Review by the IPA of the administrative investigation would be a Council policy decision,

which would need to be incorporated into the Municipal Code.<sup>9</sup>

Fiscal Impact: The fiscal impact of this recommendation is not clear at this time; increased investigations of critical incidents could result in increased staffing needs at IA or the IPA.

### Recent Critical Incidents

#### Jorge Trujillo

In January of 2006, Mr. Jorge Trujillo was badly beaten by unknown assailants but was able to escape from these assailants on foot. A few hours later Mr. Trujillo was taken into custody by SJPd officers responding to reports of a person breaking into cars in the area. The officers described Mr. Trujillo as combative and attempted to subdue him with Tasers, pepper spray, and baton strikes. He was taken into custody and died 20 hours later in a local hospital. The SJPd has treated Mr. Trujillo's death as a homicide, attributing his death to the unknown assailants. Because Mr. Trujillo died at a local hospital, the death was not deemed to be an "in custody death" by the SJPd and no administrative investigation was conducted. The IPA has been unable to review any SJPd documents in this case.

The Santa Clara County Coroner's report noted blunt impacts of the head, torso, and upper and lower extremities; no sequence of these injuries was determined but at least one blunt impact was consistent with a baton strike. The report noted multiple pepper spray and 20 Taser applications. The manner of death was listed as "homicide (physical altercation with assailant(s) and subsequent physical altercation with police)." The cause of death was "blunt impacts of the head and torso with skull, rib and internal fractures, intracranial hemorrhages, and brain injuries." The contributory cause of death was "status post multiple Taser device applications."

#### John Martinez

On June 19, 2006, SJPd officers engaged in a vehicle pursuit of a van. During the pursuit the van collided with a wrought iron fence. The Santa Clara County Coroner's report noted that the fence may have penetrated through the windshield. The Coroner's report stated that responding paramedics listed that Mr. Martinez was "tazed [sic] by police officers" but that he was responsive immediately following the Taser application. Paramedics responding on scene noted the existence of penetrating chest injuries. Mr. Martinez was taken into custody and admitted to a local hospital where he died five days later. The Coroner was informed that the death was "in custody" and followed in custody procedures. The manner of death was listed as "accident (passenger of motor vehicle which struck wrought iron fence while evading police)." The cause of death was "bronchopneumonia complicating penetrating chest injury."

#### IPA Review

The IPA has requested but has been unable to review SJPd documents in these cases. The inability to review SJPd documents leaves many important questions unanswered, namely the propriety, under the circumstances, of the use of the Taser and the vehicle pursuit. However, because the deaths of Mr. Trujillo and of Mr. Martinez were not caused by a firearm, the IPA is not authorized to review the associated SJPd documents or investigation, if any, into the officers' conduct.

<sup>9</sup> For further information about Municipal Code updates, please see page 17, "Updates to Prior Recommendations."

## CHAPTER TWO | POLICY RECOMMENDATIONS

### 3. Specific Limited Investigative Authority

Over the last two years the IPA has documented complaints and specific incidents that have gone without investigation<sup>10</sup>, or without the proper level of investigation needed to make appropriate findings.<sup>11</sup> The IPA recognizes the benefit of Internal Affairs conducting investigations of misconduct complaints and investigations of critical incidents. This recommendation, to mandate that the IPA have limited investigative authority, is made as an important addition to ensure an investigation in cases in which SJPd declines to investigate misconduct complaints, critical incidents which result in death or serious injury, or in cases in which the investigation is deemed by the IPA to lack sufficient evidence upon which to render findings.

#### Background

Under current IPA guidelines the IPA has the authority only to request further investigation during the audit phase of a citizen complaint. The IPA can request additional interviews, examination and/or analysis through the IA commander; however, this authority can only be exercised once IA has submitted a completed investigation for IPA audit. If IA disagrees with the IPA request for additional investigation, the recourse available to the IPA is to present an appeal to the chief of police and subsequently to the city manager. Due to statutory time lines, the appeal process often leaves no time for additional investigation in cases in which the IPA appeal process is successful.

As discussed in Recommendation #1 above, in the past two years the IPA has raised concerns about increased numbers of complaints classified as inquiries. These complaints receive minimal

investigation and officer names are not tracked. The IPA has been unsuccessful in many requests to upgrade the classification of inquiry complaints to investigative classifications and is now seeking a systemic solution to this problem.

The current IPA mandate has no provision for the IPA to obtain an investigation for oversight of an incident which does not give rise to a citizen complaint except in officer-involved shooting incidents. Critical incidents in which officer conduct or police policies warrant review by the IPA can evade administrative investigation and IPA oversight. The IPA may request that an investigation be conducted, but it has no authority at this time upon which to base such a request. The cases in the textbox **“Recent Critical Incidents”** on page 14 are examples of cases in which the IPA was denied access to documents and investigative reports for review of police actions and policy issues.

#### Comparison to Other Auditor Agencies

Part of the mission of the IPA is to ensure community confidence in the SJPd. There exists a gap between the mission of the IPA, to ensure that investigations are complete, objective and impartial, and the authority to fulfill that mission through oversight of the complaint process. Providing the IPA with specific and limited investigative authority can increase community confidence in the IPA as well as the SJPd. As shown in the chart on page 16, **Comparison of Mandates of Auditor/Monitor Oversight Agencies** the auditor model of oversight has evolved; many auditor/monitor agencies that have been developed in the last ten years have the authority to influence the classification of cases and to investigate complaints.

<sup>10</sup> This includes but is not limited to citizen complaints in which misconduct was alleged but which were classified as inquiry and closed with minimal investigation as well as incidents in which police conduct contributed to death or serious injury.

<sup>11</sup> These include but are not limited to citizen complaints which are classified into categories which receive lesser investigation and the investigative report does not provide complete information to make a proper finding.

## CHAPTER TWO | POLICY RECOMMENDATIONS

### Recommendation for Specific Limited Investigative Authority

The IPA is requesting authority to conduct independent investigations of cases that the SJPd and/or IA will not investigate and of investigations deemed to be incomplete by the IPA. Although the IPA anticipates that exercise of such investigative authority would be used infrequently, if ever, it is nonetheless important to have this authority to remedy perceived inadequacies in completed IA investigations or to conduct an investigation in circumstances which militate for examination and oversight. Specific protocols must be developed collaboratively through the Office of the City Manager, the SJPd and the IPA.

The IPA recommends:

3. **The Mayor and City Council consider granting the IPA specific limited authority to investigate. Exercise of such authority would be limited to:**

- a. **Investigation of community-initiated complaints which IA did not investigate;**
- b. **Investigation of critical incidents in which any SJPd action resulted in death or serious bodily injury and the SJPd did not conduct an administrative investigation;**
- c. **Investigations of complaints or critical incidents that are deemed by the IPA to be incomplete.**

**Jurisdictional Authority:** A Charter amendment and Meet and Confer with the San José Police Officer's Association would be needed to assign the IPA investigative authority.

**Fiscal Impact:** The fiscal impact of this recommendation is not clear at this time; increased investigations of critical incidents and/or complaints could result in increased staffing needs at IA or the IPA.

### Comparison of Mandates of Auditor/Monitor Oversight Agencies<sup>12</sup>

| City/State          | Agency                                 | Audit      | Critical Incident Rollout/Review       | Investigative Authority | Classification Authority |
|---------------------|--|------------|--|-------------------------|--------------------------|
| Boise, ID           | Community Ombudsman                    | Yes        | Yes/Yes                                | Yes                     | Yes                      |
| Denver, CO          | Independent Police Monitor             | Yes        | Yes/Yes                                | Yes                     | Yes                      |
| Los Angeles, CA     | Office of Independent Review           | Yes        | Yes/Yes                                | No                      | No                       |
| Portland, OR        | Independent Police Rev. Div.           | Yes        | No/No                                  | Yes                     | Yes                      |
| Sacramento, CA      | Off. Pub. Safety Accountability (OPSA) | Yes        | Yes/Yes                                | Yes                     | OPSA Cases               |
| <b>San José, CA</b> | <b>Independent Police Auditor</b>      | <b>Yes</b> | <b>Only Officer-Involved Shootings</b> | <b>No</b>               | <b>No</b>                |
| Tucson, AZ          | Independent Police Auditor             | Yes        | Yes/Yes                                | No                      | No                       |

<sup>12</sup>The oversight agencies chosen for the comparison are auditor/model agencies of similar size and jurisdiction as the IPA. Source documents: *The New World of Police Accountability*, by Samuel Walker; National Association for Civilian Oversight of Law Enforcement (NACOLE) website; and enabling legislation and/or procedural guidelines for selected auditor/monitor agencies.

## CHAPTER TWO | POLICY RECOMMENDATIONS

### II. Updates to Prior Recommendations

#### A. That the SJPD Establish an Expanded Shooting at Vehicles Policy

##### Recommendation

Based upon officer-involved shootings between the years 2003–2005, in the 2005 Year End Report the IPA recommended that the SJPD develop an expanded shooting at moving vehicles policy. The recommendation discussed the dangers and general ineffectiveness of shooting at vehicles and recommended that SJPD instruct officers to move out of the path of the vehicle, and refrain from discharging a firearm at the vehicle, unless there is no reasonable or apparent means of escape. Council directed the SJPD to consider adopting an expanded shooting at vehicles policy.

##### Changes to SJPD Policy

In April 2007 the SJPD revised sections of the duty manual incorporating many of the provisions of the IPA recommendations. New sections of the duty manual include the following:

Officers shall not knowingly place themselves into the path of a moving vehicle or into the likely path of a vehicle that is currently stopped but is under the immediate control of a driver. When feasible, officers should attempt to move out of the path of any moving vehicle to a position of cover. This tactic is safer for the officer and may eliminate the need for shooting at the driver or occupant of a moving vehicle, thereby also making it safer for others in the area.

Shooting at the driver or occupant of a moving vehicle in self-defense or the defense of another is an option only if:

- the officer reasonably believes he or she, or another person, cannot move to a safe position, and
- there are no other safe and viable options available, and
- it is in defense of the life of the officer or another person.

When a fleeing vehicle does not pose an immediate threat of serious bodily injury or death to the officer or another person at the scene, firearms will not be discharged at such fleeing vehicles except in extraordinary circumstances when an officer believes with a reasonable certainty that the driver or occupant will inflict harm likely to cause serious bodily injury or death if allowed to escape.

#### B. Updates to the San José Municipal Code to Reflect Previous Council Action

In 1999 the City Council adopted Municipal Code Section 8.04.010(B) that provides: “Review of officer-involved shootings. The police auditor shall participate in the police department’s review of Officer-Involved shootings.”

In April 2004, the Chief of Police and the IPA recommended additional policies and procedures regarding the monitoring and auditing of officer-involved shooting incidents. At an April 27, 2004 joint session meeting, the City Council approved the following:

## CHAPTER TWO | POLICY RECOMMENDATIONS

- (1) The Independent Police Auditor (IPA) will be notified immediately after an officer-involved shooting by the Internal Affairs Commander;
- (2) The IPA may respond to the scene of the officer-involved shooting and contact the Internal Affairs Commander at the outer perimeter of the crime scene;
- (3) The IPA and Internal Affairs Commander will then be briefed as to the details of the incident by on-scene personnel;
- (4) The IPA will be provided with a copy of the Internal Affairs administrative investigation document of the officer-involved shooting for auditing purposes as soon as practical after the criminal case has been concluded, but prior to the closing of the administrative investigation;
- (5) The IPA will coordinate outreach efforts immediately after an officer-involved shooting incident and the SJPd will ensure that it participates in these forums; and,
- (6) The City Manager or the City Attorney as the case may be, will cooperate with the IPA to utilize their respective contracting authority to assist the IPA in obtaining expert consultants for purposes of training, and not for the purposes of reviewing any specific complaint. In the event of a disagreement in the need for services which cost in excess of \$100,000, the request may be referred to the City Council for decision. This agreement will be evaluated after one year to determine if the IPA's needs are being adequately addressed.

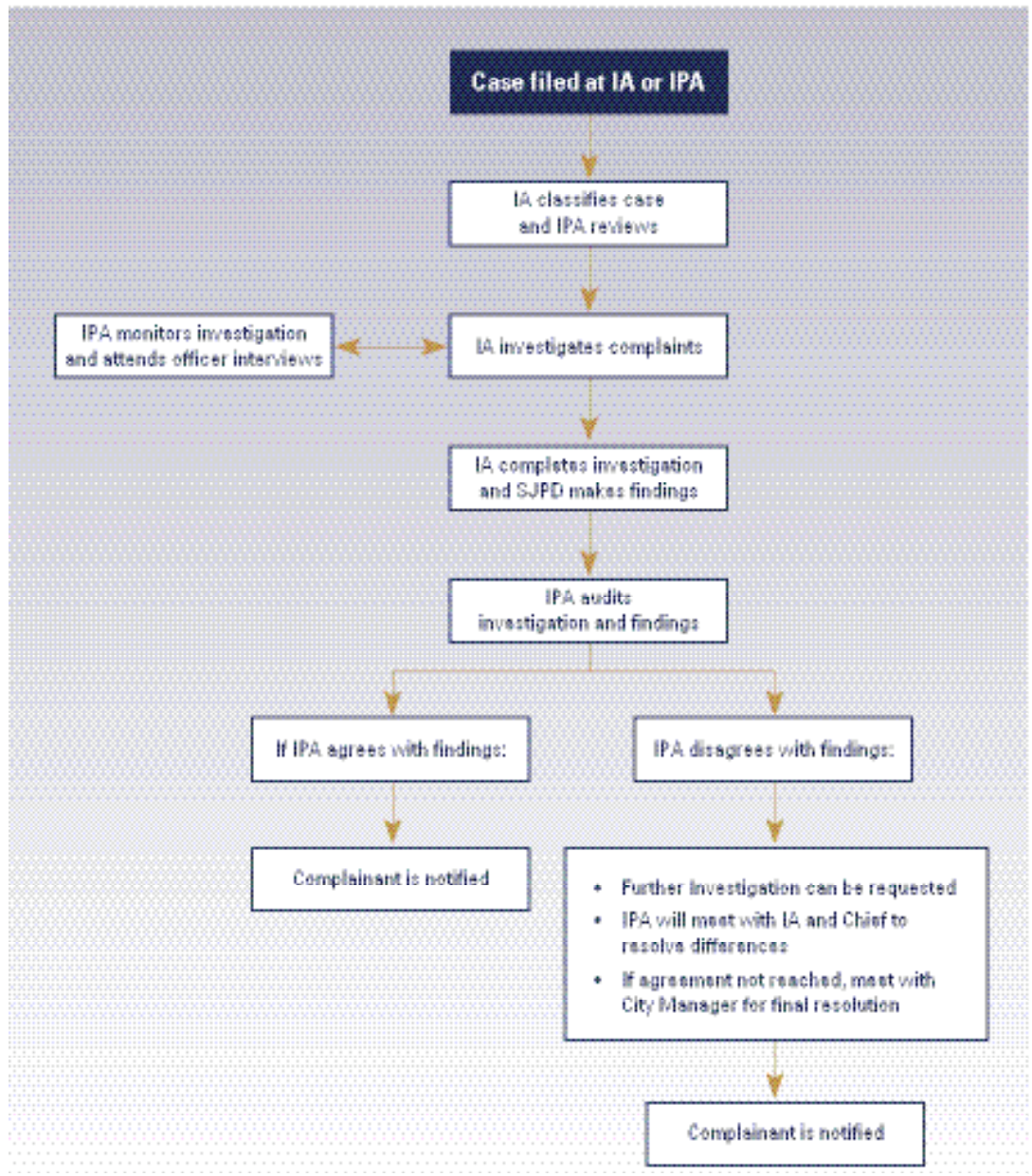
In November 2005 the IPA recommended that the IPA receive copies of the homicide report for SJPd officer-involved shooting and in-custody death incidents. At its February 28, 2006 regular session meeting the City Council approved the recommendation.

The Municipal Code has not been updated to reflect the authority granted to the IPA by the City Council in 2004 and 2005 in connection with officer-involved shooting and in-custody death incidents. The IPA recommends that the Municipal Code be amended to accurately reflect the IPA participation in such events, namely IA notification to the IPA of an officer-involved shooting, IPA presence at the perimeter of the crime scene, IPA receipt of briefing by on-scene personnel, IPA receipt of the IA investigation document for audit purposes, and IPA receipt of homicide reports for officer-involved shooting and in-custody death incidents.

## THE COMPLAINT PROCESS AND YEAR END STATISTICS

# Chapter Three

The Complaint Process Flow Chart





## CHAPTER THREE | THE COMPLAINT PROCESS AND YEAR END STATISTICS

**T**his section discusses the involvement of the Office of the Independent Police Auditor (IPA) in the complaint process including complaint intake, monitoring the investigation, and auditing completed Internal Affairs (IA) investigation report. Information about the types of cases received and/or closed in 2006 is detailed in this chapter. The data include information about the classification of cases, the audit process, findings reached by IA, and officer discipline.

### I. Oversight of the Complaint Process

Prior to the establishment of the IPA complaints against San José police officers were reported exclusively to officers assigned to IA. Since 1993 the IPA has offered an alternative non-police venue for filing complaints and has provided independent review of misconduct complaint investigations to ensure timely, objective, and thorough analysis by IA investigators.

The IPA follows the mandates of the San José Municipal Code and California Penal Code §832.5 and §832.7<sup>13</sup> that provide procedures for investigation of citizen complaints.

Complaints go through three phases in the IPA office: the intake process, monitoring the investigation, and audit of the completed investigation. The flowchart presented on page 19 provides a graphic representation of the main steps involved in the complaint process after a person contacts either the IPA or IA to file a complaint.

### A. Filing Complaints/ Intake Process

Members of the public may initiate their complaints of suspected police misconduct with the IPA or IA via mail, telephone, facsimile, e-mail, or in person. With the complainant's consent, interviews are recorded to ensure the information provided by the complainant is captured accurately. Cases received by the IPA are forwarded to IA for classification and investigation.

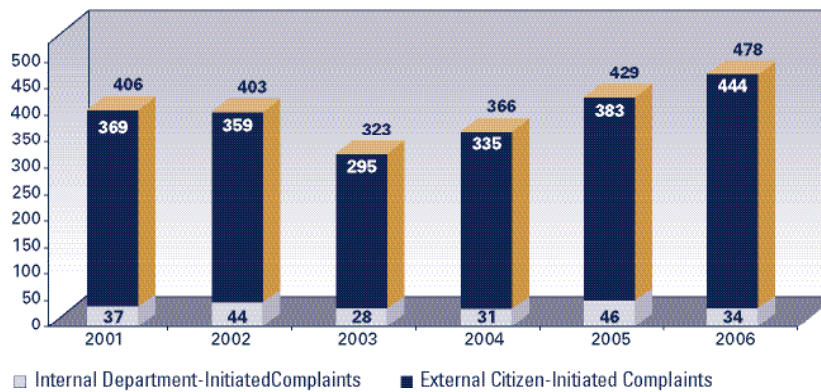
#### Complaint Confidentiality

California Penal Code §832.7 (Appendix B) deems complaints of police misconduct and complaint investigations confidential as they may be considered part of an officer's personnel file. Governed by this law, the IPA is limited in the information that it can reveal to a complainant or the public about investigated cases. The statistical analysis provided in this report must be in a form that will not disclose the identities of the parties involved.

<sup>13</sup>Text of San José Municipal Code §8.04.010 is included in **Appendix A** and California Penal Code §832.5 and §832.7 are included in **Appendix B**.

## CHAPTER THREE | THE COMPLAINT PROCESS AND YEAR END STATISTICS

**Illustration 3-A: Six-Year Overview of Total Complaints Received**



### Complaints Received—Internal and External

Complaints from members of the public that involve a San José officer are registered and documented in a shared IA/IPA database. Complaints from members of the public are “external” complaints; IA also investigates police department-initiated “internal” complaints. As indicated in **Illustration 3-A**, in 2006, 478 total complaints were filed, the combination of internal and external complaints. The number of complaints received has risen over the last few years.

There are many factors that can influence the complaint level; factors may include outreach efforts by the IPA and the SJPd, the numbers of police contacts and arrests, population levels, types of police calls and police tactics. The charts in **Illustration 3-B**, below and on the facing page, present a trend analysis of comparative data on increases in population, calls for service, and numbers of complaints over the last three years.

**Illustration 3-B: Complaints in Relation to City of San José Population and SJPd Calls for Service**

### Complaints in Relation to Population

| Year | San José City Population | % Population Change | External Complaints Received | % Complaint Change | Complaints per 10,000 Residents |
|------|--------------------------|---------------------|------------------------------|--------------------|---------------------------------|
| 2004 | 931,232                  | N/A                 | 335                          | N/A                | 3.6                             |
| 2005 | 941,116                  | 1%                  | 383                          | 14%                | 4.1                             |
| 2006 | 957,915                  | 1.8%                | 444                          | 16%                | 4.6                             |

Source of population data: California Department of Finance

Complaints Per 10,000 Residents



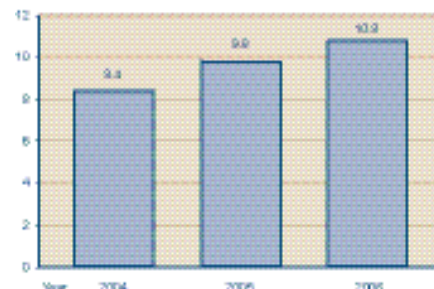
## CHAPTER THREE | THE COMPLAINT PROCESS AND YEAR END STATISTICS

### Complaints in Relation to SJPD Calls for Service

| Year | Calls for Service | % Change | External Complaints Received | % Complaint Change | Complaints per 10,000 Calls for Service |
|------|-------------------|----------|------------------------------|--------------------|---|
| 2004 | 404,000           | N/A      | 335                          | N/A                | 8.4                                     |
| 2005 | 393,196           | -2.7%    | 383                          | 14%                | 9.8                                     |
| 2006 | 413,731           | 5.2%     | 444                          | 16%                | 10.8                                    |

Source of calls for service: SJPD

Complaints Per 10,000 Calls for Service



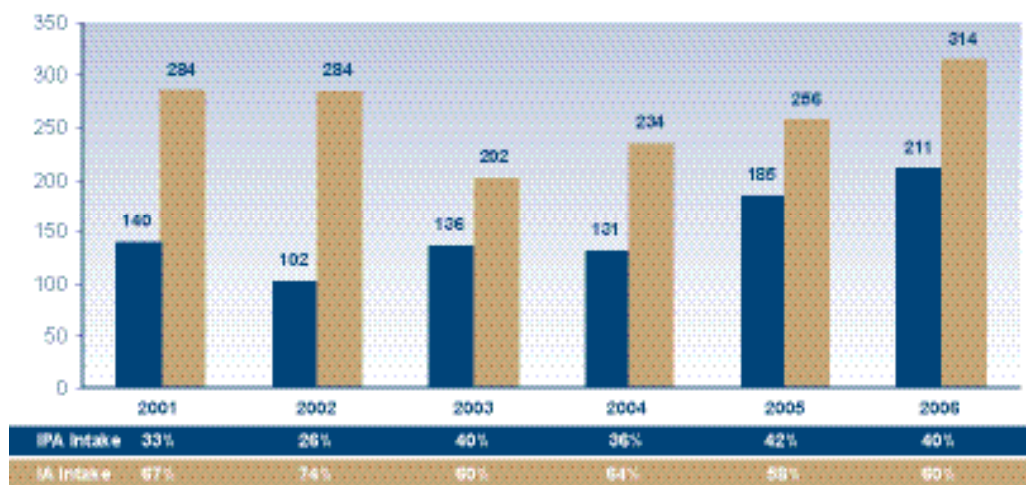
### Intake: IA and IPA

**Illustration 3-C** shows the intake levels at the IPA office and IA. The comparative intake levels at both agencies have remained fairly constant over the last few years.

As indicated in **Illustration 3-D**, despite the rise in complaints received over the last few years, there has been a decrease in cases classified as formal, those receiving the highest level of investigation, from 111, 33% of complaints received in 2004, to 107, 24% of complaints received in 2006. There has been a rise in cases classified as inquiries and informal investigation classifications during this same period, from 35% of

cases filed in 2004 to over 50% filed in 2005 and 2006. Of the 444 external/citizen-initiated complaints filed in 2006, 52%, 233 complaints containing 318 allegations, were classified as inquiries.<sup>14</sup> In complaints classified as inquiries officer names are removed and not tracked, and there is minimal investigation of the complaint allegations. The use of the procedural classification has increased since 2004, from 32 cases, 10% of cases received in 2004 to 76 cases, 17% of cases received in 2006. In procedural cases an informal investigation is conducted because it is determined in advance that there is no officer misconduct, and officers are not interviewed.

### Illustration 3-C: Complaints and Citizen Contacts Filed at IPA and IA from 2001 to 2006



<sup>14</sup> See the textbox on page 27 **Classification is Key** for a further discussion of the statistics and impact of the classification of cases on subsequent investigations.

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**Illustration 3-D: Classification of External Complaints Received**

| EXTERNAL COMPLAINTS                        | 2004       |            |            |             | 2005       |            |            |             | 2006       |            |            |             |
|--|------------|------------|------------|-------------|------------|------------|------------|-------------|------------|------------|------------|-------------|
|  | IPA        | IA         | Total      | %           | IPA        | IA         | Total      | %           | IPA        | IA         | Total      | %           |
| Formal: Citizen Initiated Complaints       | 33         | 78         | 111        | 33%         | 44         | 62         | 106        | 28%         | 40         | 67         | 107        | 24%         |
| Informal: Command Review Complaints        | 9          | 20         | 29         | 9%          | 3          | 4          | 7          | 2%          | 0          | 1          | 1          | 0.2%        |
| Procedural Complaints                      | 9          | 23         | 32         | 10%         | 21         | 21         | 42         | 11%         | 45*        | 31         | 76         | 17%         |
| Policy Complaints                          | 2          | 5          | 7          | 2%          | 1          | 1          | 2          | 1%          | 4          | 6          | 10         | 2%          |
| Inquiry Complaints                         | 37         | 81         | 118        | 35%         | 65         | 138        | 203        | 53%         | 71*        | 162        | 233        | 52%         |
| No Boland                                  | 11         | 7          | 18         | 5%          | 5          | 7          | 12         | 3%          | 1          | 9          | 10         | 2%          |
| Withdrawn                                  | 9          | 11         | 20         | 6%          | 7          | 4          | 11         | 3%          | 6          | 1          | 7          | 1.8%        |
| <b>Total Complaints Filed</b>              | <b>110</b> | <b>225</b> | <b>335</b> | <b>100%</b> | <b>146</b> | <b>237</b> | <b>383</b> | <b>100%</b> | <b>167</b> | <b>277</b> | <b>444</b> | <b>100%</b> |
| Citizen Contacts (Not complaints vs. SJPD) | 21         | 9          | 30         |             | 39         | 19         | 58         |             | 44         | 37         | 81         |             |

\* The IPA has the authority at this time to classify cases only as "pre-classification", "inquiry", or "citizen contact" at intake; the other investigation classifications are assigned by IA. In 2006 the IPA classified no complaints as "procedural" and 21 cases as "inquiry."

**Illustration 3-E: Internal Complaints Filed**

| INTERNAL COMPLAINTS  | 2004      | 2005      | 2006      |
|----------------------|-----------|-----------|-----------|
| Department Initiated | 31        | 46        | 34        |
| <b>Total</b>         | <b>31</b> | <b>46</b> | <b>34</b> |

### Types of Allegations Received

In 2006, 478 complaints containing 881 allegations were received. The complaint database has enabled the IPA to track all types of allegations received in the last three years; previously only allegations of unnecessary/excessive force were specifically examined. In 2005 IA and the IPA began recording allegations in complaints classified as inquiries as well, ensuring a more complete analysis of inquiries and the total complaint picture. Comparative data regarding all types of allegations and complaint categories, received and closed, are now included and analyzed.

A single complaint may include multiple allegations. See **Illustration 3-F** for the delineation of all allegations received. The three types of allegations most frequently reported in the 478 total internal and external complaints received in 2006 were:

- Improper procedure has been the allegation most often cited in all cases since 2004. A case can contain several improper procedure

allegations depending on the complexity of the incident. The percentage of improper procedure allegations in formal/informal investigated cases has remained steady over the last three years at approximately 30%.

- There were 129 improper procedure allegations in complaints classified as inquiries in 2006.
- Unnecessary force allegations remained fairly steady in formal/informal cases over the last three years, an average of 20% of the total allegations.
  - There were 27 unnecessary force allegations in cases classified as inquiries in 2006.
- Rude conduct allegations in formal/informal investigated cases decreased significantly between 2004 and 2006 from 135 allegations, 25% of allegations received in investigated cases in 2004, to 64, 13% of allegations received in investigated cases in 2005, to 83, 15% of allegations received in investigated cases in 2006.
  - There were 86 rude conduct allegations, 27% of allegations recorded in complaints classified as inquiries in 2006; this is an increase over the 58, 24% of allegations filed in cases classified as inquiries in 2005.

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As delineated in **Illustration 3-F**, there were slight increases in Racial Profiling and Discrimination allegations in 2006. Racial profiling allegations increased from 12 allegations in 2005 to 27 in 2006, and discrimination allegations increased from nine allegations in 2005 to 35 in 2006.

For dispositions of allegations received in all complaints see **Illustration 3-M**.

**Illustration 3-F: Types of Allegations Received in all Complaints**

| ALLEGATIONS RECEIVED<br>FORMAL/INFORMAL CASES | 2004       |             | 2005       |             | 2006       |             |
|---|------------|-------------|------------|-------------|------------|-------------|
|   | #          | %           | #          | %           | #          | %           |
| Improper Procedure                            | 163        | 30%         | 154        | 31%         | 170        | 30%         |
| Unnecessary Force                             | 98         | 18%         | 112        | 23%         | 109        | 19%         |
| Rude Conduct                                  | 135        | 25%         | 64         | 13%         | 83         | 15%         |
| Unlawful Arrest                               | 31         | 6%          | 37         | 8%          | 47         | 8%          |
| Unlawful Search                               | 13         | 2%          | 33         | 7%          | 28         | 5%          |
| Unofficer-like Conduct                        | 14         | 3%          | 27         | 6%          | 26         | 5%          |
| Missing/Damaged Property                      | 15         | 3%          | 18         | 4%          | 21         | 4%          |
| Failure to Take Action                        | 10         | 2%          | 17         | 3%          | 20         | 4%          |
| Racial Profiling                              | 9          | 2%          | 10         | 2%          | 20         | 4%          |
| Discrimination                                | 7          | 1%          | 7          | 1%          | 28         | 5%          |
| Excessive Police Service                      | 3          | 1%          | 6          | 1%          | 1          | 0%          |
| Harassment                                    | 2          | 0%          | 4          | 1%          | 3          | 1%          |
| Policy/Procedural                             | 5          | 1%          | 0          | 0%          | 5          | 1%          |
| Delayed/Slow in Response                      | 0          | 0%          | 0          | 0%          | 1          | 0%          |
| Retaliation                                   | 0          | 0%          | 0          | 0%          | 1          | 0%          |
| Inquiry (Unclassified)                        | 36         | 7%          | 0          | 0%          | 0          | 0%          |
| <b>Total Allegations</b>                      | <b>541</b> | <b>100%</b> | <b>489</b> | <b>100%</b> | <b>563</b> | <b>100%</b> |

| ALLEGATIONS RECEIVED<br>INQUIRIES | 2005        |             | 2006       |             |
|-----------------------------------|-------------|-------------|------------|-------------|
|                                   | #           | %           | #          | %           |
| Improper Procedure                | 102         | 41%         | 129        | 41%         |
| Unnecessary Force                 | 13          | 5%          | 27         | 8%          |
| Rude Conduct                      | 58          | 24%         | 86         | 27%         |
| Unlawful Arrest                   | 13          | 5%          | 16         | 5%          |
| Unlawful Search                   | 7           | 3%          | 9          | 3%          |
| Unofficer-like Conduct            | 3           | 1%          | 2          | 1%          |
| Missing/Damaged Property          | 5           | 2%          | 5          | 2%          |
| Failure to Take Action            | 10          | 4%          | 13         | 4%          |
| Racial Profiling                  | 2           | 1%          | 7          | 2%          |
| Discrimination                    | 2           | 1%          | 7          | 2%          |
| Excessive Police Service          | 4           | 2%          | 3          | 1%          |
| Harassment                        | 5           | 2%          | 6          | 2%          |
| Policy/Procedural                 | 0           | 0%          | 0          | 0%          |
| Delayed/Slow in Response          | 2           | 1%          | 1          | 0%          |
| Retaliation                       | 0           | 0%          | 0          | 0%          |
| Inquiry (Unclassified)            | 20          | 8%          | 7          | 2%          |
| <b>Total Allegations</b>          | <b>246*</b> | <b>100%</b> | <b>318</b> | <b>100%</b> |

\* 10 inquiries recorded in 2005 had no allegations delineated.

### Police Contacts

Allegations of police misconduct should be considered with the understanding that most San José police officers successfully resolve situations with no issues of complaint. In 2005, members of the SJPD handled 393,196 calls for service from the public. These contacts ranged from responding to life threatening situations, to issuing traffic citations, to responding to false alarms. Of all the citizen-to-police contacts in 2005, just over 31,062, 7.9%, involved making an arrest or issuing a criminal citation. This is consistent with the overall low crime rate in San José.

### Comparative Table Of SJPD Calls For Service And Arrests

| Year | Calls for Service | Arrests |
|------|-------------------|---------|
| 2004 | 404,000           | 26,500  |
| 2005 | 393,196           | 31,062  |
| 2006 | 413,731           | 33,995  |

## CHAPTER THREE | THE COMPLAINT PROCESS AND YEAR END STATISTICS

### Misconduct Allegations

#### **Allegation types recorded in formal complaints:**

**Discrimination (D)** allegation indicates differential or unfair treatment of a person or group on the basis of their race, religion (religious creed), color, age, marital status, national origin, ancestry, sex, sexual orientation, actual or perceived gender identity, medical condition, or disability.

**Delayed/Slow Response (DR)** allegation indicates an unreasonably slow or delayed response to a call for service.

**Harassment (H)** is alleged when a complainant was harassed either physically, verbally or by gesture on the basis of race, religion (religious creed), color, age, marital status, national origin, ancestry, sex, sexual orientation, medical condition, or disability.

**Excessive Police Service (ES)** allegation indicates excessive, recurring contacts by a police officer or by multiple police officers.

**Failure To Take Action (FA)** allegation involves no police service given to the citizen.

**Improper Procedure (IP)** allegation involves a violation of City policy or of a regulation in the San José Police Department Duty Manual.

**Missing/Damaged Property (MDP)** allegation is used to report incidents of missing or damaged property.

**Rude Conduct (RC)** allegation is abusive behavior or language, threats, profanity, and poor attitude while on duty.

**Unlawful Arrest (UA)** allegation is an arrest that is not legally conducted.

**Unofficer like Conduct (UC)** refers to conduct either on or off duty which adversely reflects upon the police department, i.e. violations of the law, drug or alcohol use, misuse of City property, gratuities, bribes or abuse of authority.

**Unnecessary Force (UF)** allegation is when the level of force used on the citizen is excessive or improper.

**Unlawful Search (US)** allegation is an improper or illegal search.

**Racial Profiling (RP)** allegation indicates that an officer initiates a contact solely based on the race of the person contacted.



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### B. Monitoring Ongoing Investigations

The IPA monitors the classification and progress of the investigation in all complaints filed by members of the public. Providing a quality control measure, this process enables the IPA to assess the objectivity and thoroughness of the investigation, the fairness of the interview process, the collection of physical evidence, and the analysis employed by the investigator.

When monitoring a case the IPA may: review documents, attend officer interviews, request further interviews, examine the location where the complaint originated, and maintain contact with complainants. This process is designed to ensure that all information is examined and documented promptly, completely and accurately.

### Classification of Complaints Received from Community

After cases are received, IA classifies them into complaint categories that determine whether or not an investigation will be conducted and the level of investigation. Cases are to be classified according to the seriousness of the case and the most appropriate method of investigation. The IPA reviews the classification of “external” community-generated cases to ensure proper classification. Currently the classification of cases can only be challenged at the conclusion of the investigation. In 2006 many efforts by the IPA to challenge IA complaint classifications were met with resistance; IA often

instructed the IPA to wait until the completion of the investigation to raise the classification issue. For further discussion, see **Recommendation #1** in **Chapter 2**.

**Illustration 3-G** presents a six-year overview of the classification of complaints. As discussed above, the total number of complaints has increased over the last several years. There has been an increase over the last two years in complaints from the public, from 335 in 2004 to 444 in 2006. The largest numerical increase in a specific complaint classification during this period was in inquiries, which rose from 118 in 2004 to 233 in 2006; in the last two years over 50% of all cases received from the public were classified as inquiries. The increase in inquiries is a matter of concern because the numbers are large, there is minimal investigation regardless of the allegations, and officer names are not retained making them inaccessible for risk management analysis, early intervention, and discovery in criminal cases.

A related change in 2006 was the reduction of the use of the command review classification. This year only one case was classified as command review, a large decrease from 29 in 2004, and from higher numbers in previous years. Command review cases generally involve less serious complaints, such as rude conduct cases, which are brought to the attention of the officer's chain of command, and require the officer to participate in a meeting with a supervisor and the IA commander to discuss the

### Illustration 3-G: Six-Year Overview of Classification of External Complaints Received

| EXTERNAL COMPLAINTS                  | 2001       | %           | 2002       | %           | 2003       | %           | 2004       | %           | 2005       | %           | 2006       | %           |
|--------------------------------------|------------|-------------|------------|-------------|------------|-------------|------------|-------------|------------|-------------|------------|-------------|
| Formal: Citizen-Initiated Complaints | 106        | 29%         | 97         | 27%         | 86         | 29%         | 111        | 33%         | 106        | 28%         | 107        | 24%         |
| Informal: Command Review Complaints  | 49         | 13%         | 41         | 11%         | 39         | 13%         | 29         | 9%          | 7          | 2%          | 1          | 0.2%        |
| Procedural Complaints                | 57         | 15%         | 49         | 14%         | 27         | 9%          | 32         | 10%         | 42         | 11%         | 76         | 17%         |
| Policy Complaints                    | 9          | 2%          | 1          | 0%          | 1          | 0%          | 7          | 2%          | 2          | 1%          | 10         | 2%          |
| Inquiry Complaints                   | 118        | 32%         | 128        | 36%         | 113        | 38%         | 118        | 35%         | 203        | 53%         | 233        | 52%         |
| No Boland/Withdrawn                  | 30         | 8%          | 43         | 12%         | 29         | 10%         | 38         | 11%         | 23         | 6%          | 17         | 3.8%        |
| <b>Total Complaints Filed</b>        | <b>369</b> | <b>100%</b> | <b>359</b> | <b>100%</b> | <b>295</b> | <b>100%</b> | <b>335</b> | <b>100%</b> | <b>383</b> | <b>100%</b> | <b>444</b> | <b>100%</b> |

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complaint. Approximately 50% of the rude conduct allegations in 2006 were in complaints classified as inquiries. Although an informal process, command review is preferable to the inquiry classification for rude conduct complaints, as the process allows for tracking of officers and involves reviewing the officer's record before classification to ensure that the officer does not have a record of similar complaints.

Another issue that has raised concerns is the increase over two years in the use of the procedural classification, from 32 cases in 2004, 10% of cases received, to 76, 17% of cases received in 2006.

There was also an increase in cases received at the IPA that were later classified by IA as "procedural," from 9 in 2004 to 45 in 2006. The increased use of this classification is of concern because it is determined by IA, after the initial intake and prior to any significant investigation, that there is no misconduct; consequently no officer interviews are conducted. The classification of many of these cases was challenged by the IPA in 2006, but few were upgraded to full investigations.

The impact of these trends in complaint classification is discussed in the textbox below, **Classification is Key**.

### Classification is Key

Over the past two years, trends in the classification of cases by Internal Affairs have been a central issue raised by the IPA. In the 2005 Year End and Mid-Year reports the IPA reported increases in cases classified as inquiries. This practice has continued in 2006. In addition, other case classification issues arose: the use of the "procedural" classification has increased in the last two years and the "command review" classification is now rarely used. There has been a decrease in cases classified as formal investigations, those receiving the highest level of investigation, from 33% of cases filed in 2004, to 24% of cases filed in 2006.

#### Inquiry Audit

Proper classification of complaints can facilitate allocating resources to more significant investigations and help streamline less serious complaints; however, audit of 214 closed cases classified as inquiries revealed that a large number of the complaints contained misconduct issues that were not investigated because they were classified as inquiries. An inquiry is defined by the SJPD as: "... a complaint that is immediately resolved by an intake officer to the satisfaction of the citizen, without requiring a more extensive investigation. An inquiry that is not immediately resolved to the citizen's satisfaction can be reclassified and be fully investigated." Complainants may agree to the inquiry classification, and can re-contact IA to change the classification, but many complainants are not fully aware of the impact of the inquiry classification, i.e. the officer's identification is not tracked in the complaint record.

The 2005 IPA Year End Report revealed that the use of the inquiry classification had risen from 118 complaints received from the public in 2004, 35%, to 203 in 2005, 53%. At year end 2006, 233 complaints received from the public were classified as inquiries, 52%. Audit of the 214 complaints closed as inquiries in 2006 revealed the following:

- 118 complaints classified as inquiries had misconduct issues that merited investigation;
- 56 complaints had been properly classified as inquiries; and
- 40 complaints, as summarized by IA, contained insufficient information to permit the IPA to accurately determine the proper classification of the complaints.

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Over the past two years well over 200 complaints containing misconduct issues have been classified as inquiries. This practice undermines the ability of the SJPd and the IPA to properly track complaints and an officer's complaint history, compromises the risk management aspect of the oversight of complaints, the early intervention program, discovery in criminal cases, and community confidence in the complaint process.

### **Procedural Classification Review**

The increased use of the "procedural" classification is a matter of equal concern as it is determined in advance of a full investigation that the officer's actions were proper. A complaint may be classified as procedural when it is determined after the preliminary investigation by the intake officer that the subject officer acted reasonably and within policy, and there is no factual basis to support the misconduct allegation, or there is another judicial entity to process the concerns of the complainant.<sup>15</sup> Cases classified as procedural increased between 2004 and 2006 from 32 to 76, a 7% increase, from 10% of complaints filed in 2004 to 17% of complaints filed in 2006.

The IPA challenged an increasing number of procedural cases this year. In many investigations the reasonable and proper conduct of an officer cannot be determined without an interview of the officer involved. Such interviews are not performed in cases classified as procedural. While this classification may have merit for some complaints that clearly articulate actions which are supported by specific department orders, it should be used judiciously, only being assigned to complaints that meet the IA guideline definition.

### **Command Review Classification**

Only one complaint was classified as "command review" in 2006, a drop from 29 in 2004. In prior years this classification was used in significantly greater numbers. Command review is an informal procedure designed as a method for handling minor complaint issues. A review of the issues of the complaint is conducted with the officer in a meeting with his or her supervisor and the IA Commander (or designee). Officer names are retained in command review complaints.

Audit of the 214 closed cases classified as inquiries indicated that many of the complaints would have been more appropriately addressed in the command review classification, providing increased supervisory review, accountability of officer misconduct issues, and retention of officer identification.

### **The Proposed Solution**

The IPA is recommending changes to the process to include objective criteria for complaint classification and increased authority for the IPA to classify complaints. Concurrent classification authority by the IPA and IA based upon objective criteria will ensure conformity in classification and will strengthen community confidence in the complaint process. **Chapter 2** contains a complete discussion of this recommendation.

<sup>15</sup> Summary of definition of procedural classification, *Internal Affairs Guidelines*.

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### Classification of Complaints/Contacts

**COMPLAINT DEFINED:** A complaint is an expressed dissatisfaction with SJPD which relates to Department operations, personnel conduct, or unlawful acts. A complaint involves an internal SJPD administrative investigative process which can result in discipline. The complaint process is separate and distinct from criminal charges which are filed by the District Attorney's office, and the claim process which is handled by the City Attorney. There are seven classifications of complaints used by the SJPD:

**1. Formal Complaint:** After the initial investigation by the intake officer, IA determines that the facts of the allegations, if proven, would amount to a violation of the law or of Department policies, procedures, rules or regulations.

- **External Civilian/Citizen-Initiated (CI):** Complaint initiated by a member of the public alleging misconduct by an SJPD officer.
- **Internal Department-Initiated (DI):** Complaint initiated by the Chief of Police alleging a serious violation of Department policy or a violation of law by an officer.

**2. Command Review (CR):** Complaint involves allegations of minor transgressions on the part of the subject officer. The complaint is reviewed in a meeting with the subject officer by his/her supervisor and the IA commander (or designee). The process does not imply that the officer has committed the transgression described in the complaint. Officers are screened for prior similar complaints and the officer's name is retained.

**3. Procedural (PR):** Complaint is defined in two ways:

- After the initial investigation by the Intake Officer, the Department determines the subject officer acted reasonably and within policy and procedure given the specific circumstances and facts of the incident, and there is no factual basis to support the misconduct allegation.
- The allegation is a dispute of fact wherein there is no independent information, evidence or witnesses available to support the complaint and another judicial entity is available to process the concerns of the complainant.

**4. Policy (PO):** Complaint pertains to an established policy, properly employed by a Department member, which the complainant understands but believes is inappropriate or not valid. These complaints do not focus on the conduct of the officer but on the policy or law with which the complainant disagrees.

**5. Inquiry (IQ)** refers to a complaint that is immediately resolved to the satisfaction of the citizen, without requiring a more extensive investigation. An inquiry that is not immediately resolved to the citizen's satisfaction can be reclassified and be fully investigated. Officer's names are not tracked in cases classified as inquiries.

**6. No Boland (NB)** classification is no longer used following a U.S. Supreme Court decision in May 2006. California Penal Code §148.6 required that complainants sign a Boland Admonishment form informing them that they could be prosecuted for a misdemeanor violation if they knowingly filed a false complaint.

**7. Citizen Contacts (CC)** are communications involving issues that are not misconduct against a San José police officer. Complainants are referred to the appropriate agency to handle their concerns or are offered help to deal with bureaucratic procedural issues, e.g. tow hearings and property issues, etc.

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### The Audit Process: A Multi-Faceted Examination for Quality Control

The IPA monitors the classification of complaints both at the intake stage and during the audit process. Classification is an important management tool that allows IA to distribute the workload and devote staff time to more serious cases. The IPA reviews the classification of complaints to monitor whether the cases are properly classified and whether the investigation level is commensurate with the seriousness of the issues raised in the complaint. Improper classification of a case can undermine the effectiveness of the complaint process.

Over the last two years the IPA has raised concerns about the classification of complaints. In 2006 the IPA became increasingly concerned about the growing number of complaints classified as “procedural” and the related decline in the number of cases receiving formal investigations. Similarly, the IPA noted an increase in the number of cases being classified as inquiries and a decline in the utilization of the “command review” classification. (See the textbox on Page 27, **Classification is Key** for further analysis of this issue, and **Chapter 2** for recommendations regarding changes to the classification process and the role of the IPA in the classification of complaints.)

Upon completion of an investigation of a complaint by IA, a copy of the investigative report is sent to the IPA for audit. Auditing of the IA investigation by the IPA is the final step in the complaint process, and is conducted prior to notifying the complainant and the subject officer of the findings. Audits involve a critical examination and analysis of the circumstances that led to the misconduct complaint, and evaluation of the quality of the investigation. The audit review includes a thorough examination of all documents and may involve listening to recorded interviews and contacting witnesses to verify information or ask further questions. The audit determines whether the case should be closed as indicated by IA or whether additional investigation or analysis should be requested. The audit process provides the community with assurance that complaints are taken seriously and investigated thoroughly, impartially, and without bias.

### C. Auditing Complaints

The IPA is mandated to audit all excessive/unnecessary force complaints and 20% of all other complaints. The IPA has historically expanded the number of audits conducted, routinely auditing over 90% of the external civilian complaint investigations completed by IA. In 2006 the IPA conducted audits of approximately 97% of the external complaints closed, including inquiries.<sup>16</sup> In 2006 IA closed 396 complaints, 358 external complaints and 38 internal department-generated complaints. Because audits are completed after cases are closed, and may involve ongoing discussions with SJPd, audited cases may not

reflect the cases closed in a specific calendar year. The IPA conducted audits of 132 investigated cases and 214 inquiries in 2006. **Illustration 3-H** details the types of cases closed and audited.

Internal complaints are reviewed and audited if there is a “citizen nexus” that links the case to a possible citizen complainant.<sup>17</sup> Cases closed as No Boland or withdrawn are also reviewed. In these cases the IPA has the authority to contact complainants to confirm their intent to terminate the investigation. Cases categorized and closed as citizen contacts are not audited, but they are reviewed to verify that there are no allegations against a San José officer.

<sup>16</sup> Due to the large rise in cases classified by IA as inquiries in the last two years, the IPA has audited closed inquiries during this period. In the past the IPA has reviewed inquiries, but has not conducted a full review of cases in this classification. Further discussion of the inquiry audit is discussed in the textbox **Classification is Key** on page 27.

<sup>17</sup> One audit was completed on a department-initiated case with a citizen nexus.

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**Illustration 3-H: Types of Complaints Audited and Closed**

| EXTERNAL COMPLAINTS AUDITED          | 2005       |             | 2006       |             |
|--------------------------------------|------------|-------------|------------|-------------|
|                                      | IA Closed  | IPA Audited | IA Closed  | IPA Audited |
| Formal: Citizen-Initiated Complaints | 72         | 66          | 76         | 71          |
| Citizen Nexus to Internal Complaints | 0          | 0           | 1          | 1           |
| Informal: Command Review Complaints  | 8          | 10          | 5          | 4           |
| Procedural Complaints                | 30         | 26          | 34         | 29          |
| Policy Complaints                    | 2          | 2           | 6          | 4           |
| Inquiry Complaints                   | 187        | 187         | 214        | 214         |
| No Boland/Withdrawn                  | 23         | 12          | 22         | 23          |
| <b>Total Complaints Audited</b>      | <b>322</b> | <b>303</b>  | <b>358</b> | <b>346</b>  |

**Internal Complaints Closed**

| INTERNAL COMPLAINTS  | 2005      | 2006      |
|----------------------|-----------|-----------|
| Department Initiated | 37        | 38        |
| <b>Total Closed</b>  | <b>37</b> | <b>38</b> |

### Audit Results — Agreement/Disagreement with IA Findings and/or Classifications in Formal/Informal Cases

Through audits, perceived deficiencies in an investigation and/or disagreements with findings reached by the IA investigator are identified. An audit results in agreement to close the case, request for additional investigation, or disagreement with the outcome of the investigation. If there is disagreement, the issue is first raised with the IA commander. If the IPA and IA are unable to resolve their differences, a formal memorandum is presented to the Chief of Police detailing the IPA's concerns and supporting analysis. Meetings may

be held to discuss, explain and debate the merits of the issues. If no consensus can be reached with the Chief of Police, the case may be forwarded to the City Manager for final resolution.

As shown in **Illustration 3-I**, of the 132 investigated cases audited in 2006, 84 cases, 64% were closed as “agreed at first review.” Further action was requested in 29, 22% of the cases. Further action can entail requesting additional documentation, research or investigation. Many of the 27 audits pending at year-end were cases that required additional information or were the subject of discussions between the IPA and SJPD.

**Illustration 3-I: IPA Audit Determination in Investigated Cases**

| AUDIT DETERMINATION IN INVESTIGATED CASES | 2003       |             | 2004       |             | 2005       |             | 2006       |             |
|---|------------|-------------|------------|-------------|------------|-------------|------------|-------------|
|   | Audits     | %           | Audits     | %           | Audits     | %           | Audits     | %           |
| Agreed at First Review                    | 249        | 82%         | 171        | 78%         | 92         | 79%         | 84         | 64%         |
| Agreed after Further Action               | 41         | 13%         | 45         | 20%         | 19         | 16%         | 29         | 22%         |
| Disagreed after Further Action            | 14         | 5%          | 4          | 2%          | 5          | 4%          | 19         | 14%         |
| <b>Total Complaints Audited</b>           | <b>304</b> | <b>100%</b> | <b>220</b> | <b>100%</b> | <b>116</b> | <b>100%</b> | <b>132</b> | <b>100%</b> |
| Audits in Progress                        | N/A        | N/A         | N/A        | N/A         | 20         | N/A         | 27         | N/A         |



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**Illustration 3-J: IPA Audit Determination in Inquiry Cases**

| IPA DETERMINATION                     | 2005       | %           | 2006       | %           |
|---------------------------------------|------------|-------------|------------|-------------|
| Disagreed with Inquiry Classification | 84         | 45%         | 118        | 55%         |
| Agreed with Inquiry Classification    | 71         | 38%         | 56         | 26%         |
| Insufficient Information              | 32         | 17%         | 40         | 19%         |
| <b>Total</b>                          | <b>187</b> | <b>100%</b> | <b>214</b> | <b>100%</b> |

### Audit Results - Agreement / Disagreement with IA Classification of Inquiry Complaints

In the last two years the IPA has documented concerns with the increase in complaints classified by IA as inquiries. To document the extent that misconduct issues have been classified as inquiries the IPA conducted an audit of all of the closed inquiries. **Illustration 3-J** above details the findings of the inquiry audits in 2005 and 2006.

### Cases in Which the IPA Disagreed with IA Findings and/or Classification of Investigated Cases

Each year there are cases that result in disagreement. In 2006 of the 132 audits of investigated cases completed, 19 cases, 14%, resulted in disagreement. As shown in **Illustration 3-K**, the number of disagreed cases increased in 2006. This year's increase in disagreed cases is due, in part, to IPA challenges to complaint classifications in formal/informal cases.

Profiles of five of the cases and an overview of the issues that resulted in disagreement in 2006 are featured in the text box on the following pages, **IA Investigations and Issues With Which The IPA Disagreed with IA**. More information is also presented in the **Classification is Key** textbox on page 27.

**Illustration 3-K: Five-Year Overview of IPA Determinations  
of Audited Complaints**

| IPA DETERMINATION                 | 2002       | 2003       | 2004       | 2005       | 2006       |
|-----------------------------------|------------|------------|------------|------------|------------|
| Agreed with Findings              | 300        | 290        | 216        | 111        | 113        |
| Disagreed with Findings           | 14         | 14         | 4          | 5          | 19         |
| <b>Investigated Cases Audited</b> | <b>314</b> | <b>304</b> | <b>220</b> | <b>116</b> | <b>132</b> |
| % Agreed with Findings            | 96%        | 95%        | 98%        | 96%        | 86%        |
| % Disagreed with Findings         | 4%         | 5%         | 2%         | 4%         | 14%        |
| Inquiry Cases Audited             | N/A        | N/A        | N/A        | 187        | 214        |
| <b>Total</b>                      | <b>314</b> | <b>304</b> | <b>220</b> | <b>303</b> | <b>346</b> |

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### Investigations and Issues With Which the IPA Disagreed With IA

In 2006 the IPA audited 132 formal/informal cases and initially disagreed with the investigation or findings in 48 of those complaints. At year's end the IPA disagreed with the classification, the investigation, or the findings made in 19 external complaints. Summaries of five of those cases and some of the issues raised during the audit process are presented here.

#### 1 Case One

The complainants alleged that officers used unnecessary force against them during the Cinco de Mayo festivities downtown. The first complainant stated that as he crossed the street, talking on his cell phone, he was tackled from behind by a plain clothes officer. He stated that the officer had no visible identification and did not verbally identify himself as a police officer. The second complainant intervened, believing his friend was being assaulted. One complainant was arrested for inciting a riot; the second was arrested for assaulting an officer.

Internal Affairs investigated only the allegation of unnecessary force against the three officers involved, exonerating all three, and found the force justified because the complainants had resisted arrest. The IPA reviewed relevant police reports, listened to the statements of the complainants and four officers, and found the evidence showed that the factual bases for the arrests were in dispute, the plain clothes officers failed to identify themselves before engaging in the initial contact, and the force used to effect the arrests was unnecessary.

The IPA disagreed with the findings and the thoroughness of the IA investigation. The evidence detailing the actions of the complainants was conflicting and statements of the officers disagreed with both the complainant and each other. The IPA found that a disproportionate weight was given to the statements of the officers, and unsupported assumptions about the basis for the arrest raised questions about the investigation and findings.

IA disagreed with the IPA analysis that there was sufficient evidence to sustain the allegation of unnecessary force and the recommendation that the allegations of unlawful arrest and improper procedure be investigated. No further investigation was conducted by Internal Affairs. Due to mandated time constraints this case was not appealed further.

#### 2 Case Two

The complainant alleged that the police used unnecessary force when they unlawfully arrested him. The complainant, a 65-year-old Latino with limited English skills, contacted police officers regarding a dispute with a newspaper vendor. He felt the officers did not respond to his request and asked for their names and badge numbers at least three times. Both the officers and the complainant stated that the officers refused to provide their badge numbers and ordered the complainant to provide them with his personal identification.

When the complainant refused to comply he was forcibly arrested for being drunk in public. Internal Affairs identified allegations of failure to take action, improper procedure, and unnecessary

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force against two officers. IA found the improper procedure allegation for failing to provide identification when requested to be “unfounded” because the officers provided the complainant with their identification at the hospital after his arrest, and found the allegation of unnecessary force to be “exonerated.”

The IPA disagreed with these findings and found that IA had not identified or investigated the complainant's allegation of unlawful arrest. The IPA further argued that there was sufficient evidence to sustain the allegation of improper procedure for failure to identify and, based on significant contradictions in the evidence, disagreed with the finding of “exonerated” for the use of force. The IPA recommended that the findings be changed to accurately reflect the weight of the evidence and that an additional allegation of Unlawful Arrest be investigated.

The findings of the Internal Affairs investigation were appealed to the City Manager who agreed with Internal Affairs.

### **The Issue of the Increased Use of the Procedural Classification**

All formal/informal complaints referred to IA are identified as “pre-classification” by the IPA. Upon receipt, IA reviews the cases and assigns a classification that defines the scope of the investigation that will be conducted.<sup>18</sup> Over the past two years there has been a notable increase in complaints classified as “procedural.” When classifying a complaint as “procedural” IA has predetermined that there is no misconduct and findings are made without an interview of the subject officers. In 2006 the IPA challenged several of these cases; three are summarized below.

### **3 Case Three**

The complainant in this case alleged unofficerlike conduct, improper procedure, unlawful search, unnecessary force and discrimination. The complainant alleged that the officer had pat searched her as many as 15 times, touching her inappropriately; she felt the officer's actions were sexual and intentional. During her four-hour IA interview the complainant recanted a portion of her statement, but insisted throughout the interview that the searches were improper and that the officer made inappropriate comments about her body. This complaint was classified and investigated as a procedural case.

Without conducting interviews of any officers present at the scene during this incident, IA found the subject officer to have acted reasonably and within department policy and procedure. In auditing the investigation the IPA reviewed the police reports and two statements provided by the complainant and determined that the allegations warranted a full investigation, particularly because the allegations involved possible sexual misconduct. The allegations, if shown to be true, could amount to a significant violation of department policies and procedures. The IPA further argued that if the allegations were not true, the officer should be given the opportunity to tell his version of the events and clear his name.

The recommendation of the IPA that the complaint be reclassified and investigated as a formal complaint was rejected by the Department. The case was appealed to the City Manager who

<sup>18</sup>For a discussion of complaint classifications see: **Classification Is Key** on page 27.

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agreed with the IPA recommendation that the officer be interviewed, however a formal investigation was not ordered. The complaint was closed without an interview of the subject officer. IA found the officer's conduct to be within procedure and no misconduct determined.

### 4 Case Four

The complainants, an African American woman and her teenage son, called the IPA alleging rude and disrespectful conduct and the improper handling of two separate incidents that occurred that afternoon. The complainant also alleged that the conduct of the two officers involved was racially motivated and discriminatory.

The complainant visited the Police Administration Building to file a report about damage to his vehicle and turn in a piece of potential evidence related to an incident the previous evening. He stated that he felt that because he was African American he was being treated as a suspect rather than a reporting party. Instead of taking the information, the officer challenged him about his actions and questioned why he had not reported the incident the night before.

The second complaint involved the removal of a handicapped placard from the complainant's vehicle without his knowledge and without a reasonable basis to believe the placard was not legally in his possession. The complainant alleged that rather than ask for documentation, the sergeant seized the placard while the complainant was inside, leaving no note or explanation for the removal.

The complainants alleged discrimination, rude conduct, and improper procedure based on the actions of the subject officers combined with their poor attitude, body language, facial expressions and tone of voice.

IA classified the complaint as procedural and reached findings without an interview of either subject officer. In finding that the conduct was within policy and that there was no misconduct determined, the investigation determined that the complainants' perceptions and experiences did not provide specific, concrete examples of discriminatory words or actions, and that their articulated perceptions were not sufficient to substantiate allegations of rude conduct or discrimination.

The IPA argued that discrimination, by its nature, is insidious and difficult to define by a single word or action and that an allegation of discrimination cannot be evaluated without an interview of the officer. The recommendation of the IPA that the case be reclassified as a formal complaint and the officers interviewed was rejected by the department. The case was appealed to the City Manager who agreed with the classification and findings of Internal Affairs.

### 5 Case Five

The complainant alleged that an officer improperly cited him for unlawfully displaying and using a disabled license plate. The complainant stated that he presented the officer with DMV documentation authorizing his possession and use of the plates. The officer independently and incorrectly interpreted the DMV form and issued a citation.

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Internal Affairs classified the case as procedural with a finding of “no misconduct determined.” The officer in the case was not interviewed. Though the investigation document contained photocopies of the DMV documents that the complainant provided to the officer before the citation was issued, the IA investigation concluded that the allegation was a dispute of fact concerning a traffic citation, with no independent evidence or witnesses.

The IPA disagreed with the procedural classification and finding of “no misconduct determined” because the DMV documents, which had been presented to the officer, authorized the complainant's possession of the handicapped license plates. The documents constituted independent evidence to support the allegation that the citation was improperly issued. The IPA recommended that the complaint be reclassified and a formal investigation conducted.

The IPA presented its disagreement with the classification and the Internal Affairs investigation to the City Manager. The City Manager agreed with the IPA and directed Internal Affairs to reclassify and investigate the complaint.

In early 2007 IA interviewed the subject officer and found the improper procedure allegation “exonerated.” The IPA disagreed with this finding. However, because mandated timelines had elapsed the case could not be appealed further.

### **Additional Disagreements: Insufficient Investigation and Conflicting Evidence**

Another basis for IPA disagreement with Internal Affairs investigations is the IPA evaluation of the insufficiency of the investigation conducted and the failure of the investigation report to address conflicting evidence and witness statements.

In seven cases Internal Affairs completed investigation reports with findings of “exonerated” or “unfounded” in which the IPA audit found conflicting statements and significant disputes of fact that had not been investigated or explained. On some occasions, though the evidence consisted of two clearly different statements, IA deemed the officer's statement to be more credible without providing a basis for such a finding. As enumerated in the text box on page 40, **Complaint Dispositions/Standard of Evidence**, when an investigation fails to disclose sufficient evidence to clearly prove or disprove an allegation, the appropriate finding is “not sustained.” The IPA disagreed with each of these cases, arguing that the findings should be “not sustained.” Internal Affairs disagreed with the IPA and the findings remained unchanged.

In addition to the cases discussed above, the IPA audited another six complaints finding that Internal Affairs concluded the investigations without interviewing or attempting to contact witnesses who had been identified by the complainant or in the police report. In some cases the IPA argued that additional officers should have been interviewed. The IPA recommended the investigations be reopened and the named witnesses, if available, be interviewed. In each case, no additional investigation was conducted, and the findings remained unchanged.

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### II. Findings of Internal Affairs Investigations

**Illustrations 3-M** and **3-N** detail the findings of IA complaint investigations. The standard of evidence used by IA is “preponderance of evidence.” This means that for a sustained finding the evidence must indicate that it is more likely than not that a violation occurred. In 2006 IA closed 396 complaints: 38 internal department-initiated complaints containing 46 allegations, and 358 external complaints containing 585 allegations.

Investigation results are dramatically different in internally generated cases compared to external complaints. In internal cases, 98%, 45 of the 46 allegations investigated, were sustained. In contrast, in external community-initiated cases 12 allegations were sustained, 4% of the allegations investigated. Other findings in external cases include: 37 allegations were not sustained, 11%; 74 allegations, 22%, were exonerated; 20 allegations, 6%, were unfounded; 87 allegations, 28%, were

closed as no finding; 45 allegations, 13% were found to be within procedure; and 34 allegations, 11% were closed as no misconduct determined.

No findings were reached in 269 allegations in complaints closed as inquiries.

### Sustained Misconduct

In 2006, 11 of 116 completed external citizen-initiated complaints were sustained (closed with at least one sustained allegation) resulting in a 9% sustained rate.<sup>19</sup> See **Illustration 3-L**. The sustained allegations in complaints from the public include one unnecessary force allegation, four improper procedure allegations, one rude conduct allegation, two property-related allegations, and three allegations of unofficerlike conduct.

In contrast, 37 of the 38 internal department-initiated investigations closed with at least one sustained allegation, a 97% sustained rate. Department-initiated complaints are initiated by the Chief of Police and may include both internal and external matters.<sup>20</sup>

**Illustration 3-L : Five-Year Overview of Formal Complaints Sustained**

| YEAR/TYPE OF COMPLAINTS   | Closed Complaints | Sustained Complaints | Sustained Rate |
|---------------------------|-------------------|----------------------|----------------|
| 2002/ External Complaints | 171               | 8                    | 5%             |
| 2002/ Internal Complaints | 52                | 34                   | 65%            |
| 2003/ External Complaints | 189               | 11                   | 6%             |
| 2003/ Internal Complaints | 40                | 34                   | 85%            |
| 2004/ External Complaints | 192               | 18                   | 9%             |
| 2004/ Internal Complaints | 24                | 22                   | 92%            |
| 2005/ External Complaints | 110               | 6                    | 5%             |
| 2005/ Internal Complaints | 37                | 31                   | 84%            |
| 2006/ External Complaints | 116               | 11                   | 9%             |
| 2006/ Internal Complaints | 38                | 37                   | 97%            |

<sup>19</sup>The sustained rate in external cases is calculated based upon the number of sustained complaints from those classified as formal, command review, or procedural.

<sup>20</sup>An external matter is one that involves a citizen and would have a citizen-nexus and IPA review, while internal issues can involve a wide range of misconduct issues to include policy or procedural violations (including personnel issues such as tardiness and abuse of sick leave, or loss of department property) to criminal conduct.



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**Illustrations 3-M** and **3-N** detail findings in both external and internal cases. The type of allegations which received the highest number of sustained findings in internally generated complaints was 26

allegations identified as improper procedure. Twelve unofficerlike conduct allegations were sustained. These allegations often address complaints related to off-duty behavior.

**Illustration 3-M: Dispositions of Allegations: External/Citizen-Initiated Cases**

| DISPOSITION                        | ALLEGATIONS |    |    |    |    |    |   |     |     |     |    |    |    |    |     | Total | % |
|------------------------------------|-------------|----|----|----|----|----|---|-----|-----|-----|----|----|----|----|-----|-------|---|
|                                    | ES          | D  | DR | F1 | F2 | FA | H | IP  | MDP | RC  | RP | UA | UC | US |     |       |   |
| Sustained                          |             |    |    |    | 1  |    |   | 4   | 2   | 1   |    |    | 3  | 1  | 12  | 4%    |   |
| Not Sustained                      |             | 3  |    |    | 8  |    |   | 5   | 2   | 18  |    |    |    | 1  | 37  | 12%   |   |
| Exonerated                         |             |    |    | 1  | 32 | 1  |   | 18  |     |     |    | 15 |    | 7  | 74  | 23%   |   |
| Unfounded                          |             |    |    |    | 8  |    |   | 4   | 3   | 1   | 2  |    | 1  | 1  | 20  | 6%    |   |
| No Finding                         | 1           | 2  |    | 1  | 17 | 4  | 1 | 27  | 3   | 13  | 2  | 11 | 1  | 4  | 87  | 28%   |   |
| Within Procedure                   |             |    |    | 1  | 11 | 2  |   | 17  |     |     |    | 5  |    | 9  | 45  | 14%   |   |
| No Misconduct Determined           |             | 5  |    |    | 2  |    | 1 | 11  |     | 12  | 1  | 2  |    |    | 34  | 11%   |   |
| Command Review                     |             |    |    |    |    |    |   | 1   |     | 4   |    |    |    |    | 5   | 2%    |   |
| Within Policy                      |             |    |    |    |    |    |   | 2   |     |     |    |    |    |    | 2   | 1%    |   |
| Formal/Informal Allegations Closed | 1           | 10 | 0  | 3  | 79 | 7  | 2 | 89  | 10  | 49  | 5  | 33 | 5  | 23 | 316 | 100%  |   |
| Allegations in Closed Inquiries    | 3           | 5  | 1  | 4  | 15 | 8  | 6 | 119 | 4   | 78  | 6  | 12 | 0  | 8  | 269 |       |   |
| Total Allegations Closed           | 4           | 15 | 1  | 7  | 94 | 15 | 8 | 208 | 14  | 127 | 11 | 45 | 5  | 31 | 585 |       |   |

**Illustration 3-N: Dispositions of Allegations: Internal/Department-Initiated Cases**

| DISPOSITION              | ALLEGATIONS |   |    |    |    |    |   |    |     |    |    |    |    |    |       |      |  |
|--------------------------|-------------|---|----|----|----|----|---|----|-----|----|----|----|----|----|-------|------|--|
|                          | ES          | D | DR | F1 | F2 | FA | H | IP | MDP | RC | RP | UA | UC | US | Total | %    |  |
| Sustained                |             |   |    |    |    |    |   | 26 | 6   | 1  |    |    | 12 |    | 45    | 98%  |  |
| Not Sustained            |             |   |    |    |    |    |   |    |     |    |    |    |    |    |       |      |  |
| Exonerated               |             |   |    |    |    |    |   |    |     |    |    |    |    |    |       |      |  |
| Unfounded                |             |   |    |    |    |    |   |    |     |    |    |    |    |    |       |      |  |
| No Finding               |             |   |    |    |    |    |   |    |     |    |    |    | 1  |    | 1     | 2%   |  |
| Within Procedure         |             |   |    |    |    |    |   |    |     |    |    |    |    |    |       |      |  |
| No Misconduct Determined |             |   |    |    |    |    |   |    |     |    |    |    |    |    |       |      |  |
| Command Review           |             |   |    |    |    |    |   |    |     |    |    |    |    |    |       |      |  |
| Within Policy            |             |   |    |    |    |    |   |    |     |    |    |    |    |    |       |      |  |
| Total Allegations        |             |   |    |    |    |    |   | 26 | 6   | 1  |    |    | 13 |    | 46    | 100% |  |

### Legend of Allegations

ES= Excessive Police Service

D= Discrimination

DR= Delay in Response/Slow Response

F1= Unnecessary Force (w/medical)

F2= Unnecessary Force (w/o medical)

FA= Failure to Take Action

H= Harassment

IP= Improper Procedure

MDP=Missing/Damaged Property

RC= Rude Conduct

RP= Racial Profiling

UA= Unlawful Arrest

UC= Unofficer like Conduct

US= Unlawful Search

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### III. Discipline Imposed

As delineated in **Illustration 3-O**, in 2006 discipline was imposed on 14 officers in external citizen-initiated cases and on 37 officers in internal department-initiated cases. A total of 12 allegations were sustained in 11 external complaints and a total of 45 allegations were sustained in 37 internal complaints closed.

The primary type of discipline imposed in citizen-initiated complaints was training and/or counseling. Documented Oral Counseling (DOC) and/or training were imposed on over 65% of the officers who received discipline. Officers received DOC in

16 internal and five external cases. Serious discipline was issued in two sustained citizen complaints: in one case an officer was terminated, in another an officer received a 40-hour suspension. Suspensions were imposed against three officers in internal complaints: two officers received 40-hour suspensions, and one received an 80-hour suspension.

The number of officers disciplined in external community-initiated complaints has decreased significantly since 2004; there were 37 officers disciplined in 18 sustained complaints in 2004 compared to 14 officers disciplined in 11 sustained complaints in 2006.

**Illustration 3-O: Discipline Imposed on Subject Officers**

| DISCIPLINE IMPOSED                         | 2004                        |                             |           |             | 2005                        |                             |           |             | 2006                        |                             |           |             |
|--|-----------------------------|-----------------------------|-----------|-------------|-----------------------------|-----------------------------|-----------|-------------|-----------------------------|-----------------------------|-----------|-------------|
|  | Officers in External Comps. | Officers in Internal Comps. | Total     | %           | Officers in External Comps. | Officers in Internal Comps. | Total     | %           | Officers in External Comps. | Officers in Internal Comps. | Total     | %           |
| Training                                   | 3                           | 0                           | 3         | 5%          | 6                           | 0                           | 6         | 13%         | 1                           | 0                           | 1         | 2%          |
| Training & Counseling                      | 21                          | 3                           | 24        | 39%         | 1                           | 1                           | 2         | 4%          | 5                           | 6                           | 11        | 22%         |
| Counseling                                 | 3                           | 0                           | 3         | 5%          | 0                           | 0                           | 0         | 0%          | 0                           | 0                           | 0         | 0%          |
| Documented Oral Counseling (DOC)           | 7                           | 7                           | 14        | 23%         | 4                           | 20                          | 24        | 50%         | 5                           | 16                          | 21        | 41%         |
| DOC & Training                             | 0                           | 0                           | 0         | 0%          | 1                           | 1                           | 2         | 4%          | 0                           | 0                           | 0         | 0%          |
| Letter of Reprimand                        | 0                           | 2                           | 2         | 3%          | 0                           | 3                           | 3         | 6%          | 0                           | 2                           | 2         | 4%          |
| 10- Hour Suspension                        | 0                           | 2                           | 2         | 3%          | 0                           | 3                           | 3         | 6%          | 0                           | 9                           | 9         | 18%         |
| 20- Hour Suspension                        | 0                           | 1                           | 1         | 2%          | 0                           | 1                           | 1         | 2%          | 0                           | 0                           | 0         | 0%          |
| 30- Hour Suspension                        | 0                           | 0                           | 0         | 0%          | 0                           | 1                           | 1         | 2%          | 0                           | 0                           | 0         | 0%          |
| 40- Hour Suspension                        | 0                           | 4                           | 4         | 6%          | 0                           | 0                           | 0         | 0%          | 1                           | 2                           | 3         | 6%          |
| 60- Hour Suspension                        | 0                           | 1                           | 1         | 2%          | 0                           | 0                           | 0         | 0%          | 0                           | 0                           | 0         | 0%          |
| 80- Hour Suspension                        | 1                           | 0                           | 1         | 2%          | 0                           | 0                           | 0         | 0%          | 0                           | 1                           | 1         | 2%          |
| 100- Hour Suspension                       | 0                           | 0                           | 0         | 0%          | 0                           | 1                           | 1         | 2%          | 0                           | 0                           | 0         | 0%          |
| Settlement Agreement                       | 0                           | 1                           | 1         | 2%          | 0                           | 1                           | 1         | 2%          | 0                           | 1                           | 1         | 2%          |
| Letter of Reprimand & Settlement Agreement | 0                           | 0                           | 0         | 0%          | 0                           | 0                           | 0         | 0%          | 1                           | 0                           | 1         | 2%          |
| Disciplinary Transfer                      | 1                           | 0                           | 1         | 2%          | 0                           | 0                           | 0         | 0%          | 0                           | 0                           | 0         | 0%          |
| Demotion                                   | 0                           | 0                           | 0         | 0%          | 1                           | 0                           | 1         | 2%          | 0                           | 0                           | 0         | 0%          |
| Termination                                | 0                           | 3                           | 3         | 5%          | 0                           | 0                           | 0         | 0%          | 1                           | 0                           | 1         | 2%          |
| Retirement before Discipline               | 0                           | 0                           | 0         | 0%          | 0                           | 1                           | 1         | 2%          | 0                           | 0                           | 0         | 0%          |
| Resigned before Discipline                 | 1                           | 1                           | 2         | 3%          | 0                           | 2                           | 2         | 4%          | 0                           | 0                           | 0         | 0%          |
| <b>Total Discipline Imposed</b>            | <b>37</b>                   | <b>25</b>                   | <b>62</b> | <b>100%</b> | <b>13</b>                   | <b>35</b>                   | <b>48</b> | <b>100%</b> | <b>14</b>                   | <b>37</b>                   | <b>51</b> | <b>100%</b> |

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### Complaint Dispositions/Standard of Evidence

**Standard of Evidence:** “Preponderance of Evidence,” the evidence indicates that it is more likely than not that a violation occurred or did not occur.

#### I. Dispositions for Formal Complaints (From IA Guidelines):

- **Sustained:** The investigation disclosed sufficient evidence to clearly prove the allegation made in the complaint.
- **Not Sustained:** The investigation failed to disclose sufficient evidence to clearly prove or disprove the allegation.
- **Exonerated:** The incident occurred as alleged; however, the investigation revealed that the officer's actions were justified, lawful and proper.
- **Unfounded:** The investigation conclusively proved that the act or acts complained of did not occur. This finding also applies when the individual member(s) or employee(s) named were not involved in the act or acts that may have occurred.
- **No Finding:** The complainant withdrew the complaint, failed to disclose promised information to further the investigation, is no longer available, or the investigation revealed that another agency was involved and the complainant has been referred to that agency. Additional reasons may include: lack of signature on the Boland Admonishment; officer resigned from the SJPd before the investigation was closed; the officer's identity could not be determined.

#### II. Dispositions for Procedural Complaints:

- **Within Procedure:** The initial investigation determined that the subject officer acted reasonably and within Department policy and procedure given the specific circumstances and facts of the incident and that, despite the allegation of misconduct, there is no factual basis to support the allegation.
- **No Misconduct Determined:** The initial investigation determined that the allegation is a dispute of fact case wherein there is no independent information, evidence or witnesses available to support the complaint and there exists another judicial entity available to process the concerns of the complainant.

**III. Command Review Complaints:** Involves allegations of minor transgressions by an officer, which may be handled informally through the officer's chain of command. This process does not imply that the subject officer has or has not committed the transgression as described by the complainant.

**IV. Inquiry:** A complaint that is immediately resolved to the satisfaction of the citizen, without requiring a more extensive investigation. An inquiry that is not immediately resolved to the citizen's satisfaction can be reclassified and be fully investigated. Officer's names are not tracked in cases classified as inquiries.

**V. No Boland:** Following a U.S. Supreme Court decision in May 2006, this disposition is no longer used. Previously, a complaint was closed within 30 days from the date the case was received when a complainant failed to sign the Boland Admonishment. California Penal Code §148.6 required that complainants sign a Boland Admonishment form informing them that they could be prosecuted for a misdemeanor violation if they knowingly filed a false complaint.

**VI. Withdrawn:** A complaint is withdrawn at the complainant's request or by failure of the complainant to return a signed Boland Admonishment.

## I. Introduction

**T**his chapter provides information and data about complaints alleging that San José police officers used unnecessary or excessive force. It also provides information about officer-involved shootings and critical incidents in 2006. Because use of force complaints present some of the most serious issues of potential police misconduct, the IPA is required to audit all use of force complaint investigations conducted by Internal Affairs.

An investigation of a use of force complaint must examine whether the officer used objectively reasonable force as defined in the SJPD Duty Manual. Police officers are allowed to use force in the performance of their duties in situations in which they are forced to overcome resistant or combative individuals and/or defend themselves or others. An investigation must examine all the facts and circumstances associated with the incident in order to determine whether or not the officer acted reasonably.

## II. Use of Force Complaints and Allegations

### A. Unnecessary Force Complaints Filed in 2006

All unnecessary force cases filed in 2006 were external cases, meaning that each was initiated by a member of the community; there were no internal unnecessary force cases last year. In 2006, 97 of the 444 complaints received, 22% contained unnecessary force allegations.

**Illustration 4-A** shows a three-year overview of the classification of unnecessary force complaints. Of the 97 unnecessary force complaints filed in 2006, 51 were formally investigated, 25 were classified as inquiry, 14 were classified as procedural complaints, four as complaint withdrawn, and three as No Boland. These figures reflect a decrease in force cases in which the officer was interviewed. In 2005, 60 of 82 unnecessary force cases<sup>21</sup> were formally investigated and four were classified as procedural. The impact of the change in complaint classifications is that in 2006, 53% of the unnecessary force complaints were formally investigated, as compared to 2005 in

<sup>21</sup>Of these 60 cases, one was initiated by the department.

## USE OF FORCE ANALYSIS

**Illustration 4-A: Classification of Unnecessary Force (UF) Complaints**

| TYPE OF COMPLAINTS CLASSIFICATION            | 2004      | %           | 2005      | %           | 2006      | %           |
|--|-----------|-------------|-----------|-------------|-----------|-------------|
| Formal: Citizen-Initiated Complaints         | 55        | 89%         | 59        | 72%         | 51        | 53%         |
| Department-Initiated Complaints              | 0         | 0%          | 1         | 1%          | 0         | 0%          |
| Informal: Command Review Complaints          | 0         | 0%          | 0         | 0%          | 0         | 0%          |
| Procedural Complaints                        | 3         | 5%          | 4         | 5%          | 14        | 14%         |
| Policy Complaints                            | 0         | 0%          | 0         | 0%          | 0         | 0%          |
| Inquiry Complaints                           | N/A*      | N/A*        | 12        | 15%         | 25        | 26%         |
| No Boland                                    | 4         | 6%          | 4         | 5%          | 3         | 3%          |
| Withdrawn                                    | 0         | 0%          | 2         | 2%          | 4         | 4%          |
| <b>Total Classification of UF Complaints</b> | <b>62</b> | <b>100%</b> | <b>82</b> | <b>100%</b> | <b>97</b> | <b>100%</b> |

\* Not available. Prior to 2005, allegations were not tracked in inquiries.

**Illustration 4-B: Complaints Filed - Five-Year Overview of Unnecessary Force**

| YEAR | Formal/Informal Complaints |                        |                     | % Total Complaints | Inquiry Complaints               |                                   |                                | Total Number of Complaints |
|------|----------------------------|------------------------|---------------------|--------------------|----------------------------------|-----------------------------------|--------------------------------|----------------------------|
|      | UF Class I Complaints      | UF Class II Complaints | Total UF Complaints |                    | UF Class I in Inquiry Complaints | UF Class II in Inquiry Complaints | Total UF in Inquiry Complaints |                            |
| 2002 | 9                          | 45                     | 54                  | 13%                | N/A*                             | N/A*                              | N/A*                           | 403                        |
| 2003 | 7                          | 42                     | 49                  | 15%                | N/A*                             | N/A*                              | N/A*                           | 323                        |
| 2004 | 7                          | 55                     | 62                  | 17%                | N/A*                             | N/A*                              | N/A*                           | 366                        |
| 2005 | 4                          | 66                     | 70                  | 16%                | 1                                | 11                                | 12**                           | 429                        |
| 2006 | 9                          | 63                     | 72                  | 15%                | 4                                | 21                                | 25                             | 478                        |

\* Not available. Prior to 2005, allegations were not tracked in inquiries.

\*\* 10 inquiries recorded in 2005 had no allegations delineated.

which 73% of the unnecessary force complaints were formally investigated.

The number of unnecessary force allegations can be higher than unnecessary force complaints because a complaint may contain more than one force allegation. Of the 840 allegations<sup>22</sup> contained in external complaints, 136, 16% were unnecessary force. **Illustrations 4-B and 4-C**, respectively, show that there were 72 unnecessary force formal/informal complaints with a total of 109 unnecessary force allegations filed in 2006. In

addition, there were 25 unnecessary force complaints classified as inquiries which contained 27 unnecessary force allegations.

Twenty-five complaints containing at least one allegation of unnecessary force were classified as inquiry in 2006. Unnecessary force allegations classified as inquiries is a matter of concern because officer names are removed and not tracked, and there is minimal investigation of the complaint allegations.<sup>23</sup>

<sup>22</sup>There were a total of 881 allegations in all complaints received in 2006; 41 allegations were contained within complaints initiated by the department, none of which were force allegations.

<sup>23</sup>See the textbox on page 27, **Classification is Key** for a further discussion of the impact of the classification of cases on subsequent investigations.

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**Illustration 4-C: Allegations Filed – Five Year Overview of Unnecessary Force**

| YEAR | UF Class I Allegations in Complaints | UF Class II Allegations in Complaints | Total UF Allegations in Complaints | UF Class I Allegations in Inquiry Complaints | UF Class II Allegations in Inquiry Complaints |
|------|--------------------------------------|---------------------------------------|------------------------------------|--|---|
| 2002 | 11                                   | 77                                    | 88                                 | N/A*   | N/A*  |
| 2003 | 23                                   | 60                                    | 83                                 | N/A*   | N/A*  |
| 2004 | 12                                   | 86                                    | 98                                 | N/A*   | N/A*  |
| 2005 | 5                                    | 107                                   | 112                                | 1**  | 12**  |
| 2006 | 12                                   | 97                                    | 109                                | 4  | 23  |

\* Not available. Prior to 2005, allegations were not tracked in inquiries.

\*\*10 inquiries recorded in 2005 had no allegations delineated.

### B. Unnecessary Force: Class I and Class II

Class I use of force complaints are the most serious type of force cases and entail allegations of force which caused serious bodily injury requiring medical care. In 2006 there were nine Class I force complaints filed. The remainder of the force cases filed in 2006, 63, were identified as Class II. See **Illustration 4-B**.

There were 109 unnecessary force allegations contained within formal/informal complaints filed in 2006; 12 allegations were Class I force and 97 allegations were Class II force. In addition, there were 27 unnecessary force allegations contained

within complaints classified as inquiry; four allegations were Class I force and the remaining 23 allegations were Class II force. See **Illustration 4-C**.

### C. Unnecessary Force Complaints by Ethnicity

**Illustration 4-D** shows the number of unnecessary force complaints classified as formal/informal and as inquiry by the ethnicity of the complainant.<sup>24</sup> Hispanic/Latino complainants filed 152 cases in 2006, 34% of 444 external complaints filed. In 2006, 52 of the 97 unnecessary force complaints filed, 54% were filed by persons identified as Hispanic/Latino.

**Illustration 4-D: Five-Year Overview of Complainant's Level of Injury**

| ETHNICITY FROM SURVEYS & INTAKE | UF Class I | UF Class II | UF Class I in Inquiries | UF Class II in Inquiries | Total UF External Complaints |             | Total External Complaints |             |
|---------------------------------|------------|-------------|-------------------------|--------------------------|------------------------------|-------------|---------------------------|-------------|
|                                 |            |             |                         |                          | Number                       | %           | Number                    | %           |
| African American                | 1          | 12          | 0                       | 2                        | 15                           | 15%         | 70                        | 16%         |
| Asian/Pacific Islander          | 0          | 1           | 0                       | 0                        | 1                            | 1%          | 14                        | 3%          |
| White                           | 1          | 8           | 1                       | 5                        | 15                           | 15%         | 107                       | 24%         |
| Filipino                        | 0          | 0           | 0                       | 1                        | 1                            | 1%          | 2                         | 0%          |
| Hispanic/Latino                 | 7          | 35          | 3                       | 7                        | 52                           | 54%         | 152                       | 34%         |
| Native American                 | 0          | 0           | 0                       | 0                        | 0                            | 0%          | 3                         | 1%          |
| Vietnamese                      | 0          | 1           | 0                       | 0                        | 1                            | 1%          | 6                         | 1%          |
| Other                           | 0          | 1           | 0                       | 0                        | 1                            | 1%          | 19                        | 4%          |
| Decline/Unk.Ethnicity           | 0          | 5           | 0                       | 6                        | 11                           | 11%         | 71                        | 16%         |
| <b>Total</b>                    | <b>9</b>   | <b>63</b>   | <b>4</b>                | <b>21</b>                | <b>97</b>                    | <b>100%</b> | <b>444</b>                | <b>100%</b> |

<sup>24</sup>The ethnicity of all persons filing complaints in 2006 is not known. Information for this section comes from voluntary survey results. For more information on complainant demographics, see **Chapter 6**.



## CHAPTER FOUR | USE OF FORCE ANALYSIS

African-American complainants filed 15, 15% of the unnecessary force cases, and 70 total external complaints, 16% of the total complaints filed in 2006. White complainants filed 15, 15% of the unnecessary force cases and 107, 24% of the total external complaints filed in 2006.

### D. Unnecessary Force Complaints Closed/Audited in 2006

As indicated in **Illustration 4-E**, the IPA audited 61 closed unnecessary force complaint investigations in 2006. Of these closed investigations, 23 were closed as “agreed at first review,” 20 were closed as “agreed after further action” and nine were closed as “disagreed.” There were nine audits of unnecessary force cases pending at the end of 2006.

In addition to tracking force data from complaints filed, the IPA also tracks specific force-related information obtained from the audits of closed unnecessary force complaint investigations. In order to determine whether any trends or patterns can be detected from use of force complaints the IPA tracks: 1) the level of injury caused by the force used; 2) the part of the complainant’s body impacted by the force; and 3) the type of force used by the officer.

**Illustration 4-F** provides data about the level of injury resulting from the alleged use of force. There are five categories ranging from “major” to “none.” Major injuries require significant medical attention, whereas minor injuries require little or no medical

### Illustration 4-E: Formal/Informal Unnecessary Force Complaints Audited

| YEAR | UF Class I Complaints Audited | UF Class II Complaints Audited | Total UF Complaints Audited |
|------|-------------------------------|--------------------------------|-----------------------------|
| 2002 | 7                             | 49                             | 56                          |
| 2003 | 10                            | 63                             | 73                          |
| 2004 | 6                             | 67                             | 73                          |
| 2005 | 3                             | 42                             | 45                          |
| 2006 | 3                             | 58                             | 61                          |

attention. For example, minor injuries can involve minor abrasions, bruising or the use of chemical agents. Over the past five years major and moderate injuries together have remained constant, with nine injuries, 14% reported in 2006. Minor and no injuries continue to account for the highest percentage of injury levels with 50 allegations, 82%, reported in 2006.

**Illustration 4-G** provides data reflecting the part of the complainant’s body that was impacted by the alleged force. The IPA tracks this data to determine if any trends exist in force cases. The areas of the body are divided into five categories: head, torso, limbs, multiple body parts and unknown. In each complaint the alleged unnecessary force can impact more than one body area. The IPA closely monitors the number of allegations citing head injuries as force to the head has the greatest potential to cause serious injuries. The data does not indicate any significant change in 2006 regarding the number of allegations citing head injuries.

### Illustration 4-F: Five-Year Overview of Complainant's Level of Injury

| DEGREE OF INJURY | 2002   |      | 2003   |      | 2004   |      | 2005   |      | 2006   |      |
|------------------|--------|------|--------|------|--------|------|--------|------|--------|------|
|                  | Number | %    | Number | %    | Number | %    | Number | %    | Number | %    |
| Major            | 0      | 0%   | 0      | 0%   | 4      | 5%   | 2      | 4%   | 2      | 3%   |
| Moderate         | 8      | 14%  | 11     | 15%  | 9      | 12%  | 5      | 11%  | 7      | 11%  |
| Minor            | 37     | 66%  | 39     | 53%  | 45     | 62%  | 33     | 73%  | 37     | 61%  |
| None             | 6      | 11%  | 13     | 18%  | 9      | 12%  | 5      | 11%  | 13     | 21%  |
| Unknown          | 5      | 9%   | 10     | 14%  | 6      | 8%   | 0      | 0%   | 2      | 3%   |
| Total            | 56     | 100% | 73     | 100% | 73     | 100% | 45     | 100% | 61     | 100% |

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**Illustration 4-G: Location of Force Applications - Five-Year Comparison**

| LOCATION OF FORCE APPLICATIONS | 2002<br>Number | %           | 2003<br>Number | %           | 2004<br>Number | %           | 2005<br>Number | %           | 2006<br>Number | %           |
|--------------------------------|----------------|-------------|----------------|-------------|----------------|-------------|----------------|-------------|----------------|-------------|
| Head                           | 27             | 35%         | 33             | 30%         | 26             | 25%         | 11             | 16%         | 16             | 18%         |
| Torso                          | 18             | 23%         | 33             | 30%         | 34             | 33%         | 30             | 43%         | 31             | 34%         |
| Limbs                          | 23             | 29%         | 31             | 28%         | 33             | 32%         | 24             | 34%         | 35             | 38%         |
| Multiple Body Parts            | 8              | 10%         | 9              | 8%          | 7              | 7%          | 3              | 4%          | 6              | 7%          |
| Unknown                        | 2              | 3%          | 4              | 4%          | 2              | 2%          | 2              | 3%          | 3              | 3%          |
| <b>Total</b>                   | <b>78</b>      | <b>100%</b> | <b>110</b>     | <b>100%</b> | <b>102</b>     | <b>100%</b> | <b>70</b>      | <b>100%</b> | <b>91</b>      | <b>100%</b> |

Data about the types of force is collected to track the frequency of force used as shown in

**Illustration 4-H.** The number of types of force alleged is greater than the total number of unnecessary force complaints because there can be more than one type of force alleged in the same complaint, and there can be more than one officer alleged to have used unnecessary force. For example, a complainant may allege that one officer struck him with a baton, and another officer hit him with fists and placed handcuffs on too tightly. This example would account for three different types of unnecessary force allegations against multiple officers in one complaint. Depending on the circumstances, an assertion that the officers

placed handcuffs on too tightly, or in some other manner which caused injury, may be captured as an unnecessary force allegation or as an improper procedure allegation.

The frequency of different types of force allegations has remained fairly consistent during the past five years. The use of hands, the use of the ground and the use of batons continue to be the three types of unnecessary force alleged most often. With ten allegations, 9% of the force allegations filed in 2006, the use of a Taser is the fourth most frequently alleged type of unnecessary force. There were two fatal critical incidents in 2006 in which Tasers, as well as other types of force, were used.<sup>25</sup> See

**Illustration 4-H: Type of Force Alleged - Five-Year Comparison**

| TYPE OF UNNECESSARY FORCE | 2002<br>Number | %           | 2003<br>Number | %           | 2004<br>Number | %           | 2005<br>Number | %           | 2006<br>Number | %           |
|---------------------------|----------------|-------------|----------------|-------------|----------------|-------------|----------------|-------------|----------------|-------------|
| Baton                     | 7              | 7%          | 14             | 10%         | 18             | 13%         | 9              | 11%         | 11             | 10%         |
| Canines                   | 0              | 0%          | 1              | 1%          | 0              | 0%          | 1              | 1%          | 0              | 0%          |
| Car                       | 5              | 5%          | 3              | 2%          | 2              | 1%          | 1              | 1%          | 6              | 5%          |
| Chemical Agent            | 4              | 4%          | 2              | 1%          | 4              | 3%          | 6              | 7%          | 3              | 3%          |
| Gun                       | 1              | 1%          | 1              | 1%          | 1              | 1%          | 2              | 2%          | 1              | 1%          |
| Feet                      | 8              | 8%          | 9              | 6%          | 13             | 9%          | 4              | 5%          | 3              | 3%          |
| Ground                    | 15             | 14%         | 26             | 19%         | 16             | 12%         | 14             | 17%         | 17             | 15%         |
| Hands                     | 45             | 43%         | 56             | 40%         | 51             | 37%         | 29             | 35%         | 43             | 38%         |
| Handcuffs                 | 13             | 12%         | 13             | 9%          | 10             | 7%          | 5              | 6%          | 5              | 4%          |
| Knee                      | 5              | 5%          | 9              | 6%          | 13             | 9%          | 5              | 6%          | 9              | 8%          |
| Taser                     | N/A*           | N/A*        | N/A*           | N/A*        | 4              | 3%          | 7              | 8%          | 10             | 9%          |
| Object                    | 0              | 0%          | 3              | 2%          | 3              | 2%          | 0              | 0%          | 0              | 0%          |
| Other                     | 1              | 1%          | 2              | 1%          | 2              | 1%          | 0              | 0%          | 4              | 4%          |
| Unknown                   | 1              | 1%          | 1              | 1%          | 1              | 1%          | 0              | 0%          | 1              | 1%          |
| <b>Total</b>              | <b>105</b>     | <b>100%</b> | <b>140</b>     | <b>100%</b> | <b>138</b>     | <b>100%</b> | <b>83</b>      | <b>100%</b> | <b>113</b>     | <b>100%</b> |

\* Not available. Tasers were not used in San José before 2004.

<sup>25</sup>For more information on critical incidents see the proposed recommendations in **Chapter 2**.

## CHAPTER FOUR | USE OF FORCE ANALYSIS

**Illustration 4-L** later in this chapter for more information regarding these incidents. The SJPD developed written guidelines for Taser use in December 2005 following an IPA policy recommendation.

**Illustration 4-I** provides specific information concerning the disposition for each unnecessary force allegation in formal/informal complaints. One case alleging Class II use of force was sustained in 2006; there were no sustained Class I use of force cases. Thirty-three of 84, 39%, of Class I and Class II use of force allegations were found to be exonerated, which means that the investigations determined that the level and type of force used by the officers were reasonable and justified.

### III. Officer-Involved Shootings and Fatal Critical Incidents

The use of deadly force is the most serious type of force that can be used by a police officer. The IPA continues to work with the SJPD to provide careful scrutiny of these cases to ensure that the officers acted lawfully and within department policies and procedures. The overriding goal of this review process is to explore all reasonable measures that could reduce the possibility that an officer would have to use deadly force.

The SJPD Duty Manual Section L-2638 states, “An officer may discharge a firearm under any of the following circumstances: . . . When deadly force is objectively reasonable in self-defense or in defense of another person’s life.” When a person is injured or killed as a result of an officer-involved shooting there is always great community concern and many questions arise as to the necessity for the use of lethal force. In recognition of the serious nature of these issues, the IPA closely monitors and reviews the investigation of SJPD officer-involved shootings and has been given additional responsibilities including responding to the scene when these incidents occur.

Every officer-involved shooting that results in death is subject to an intensive investigation and review process that is outlined in the flow chart in **Illustration 4-J**. As the chart indicates, the SJPD Homicide Unit conducts a criminal investigation that is monitored by the Internal Affairs Unit. The criminal investigation is presented to the county Grand Jury by the Santa Clara County District Attorney to determine whether there is sufficient evidence for a crime to be charged. After completion of the criminal investigation and the Grand Jury review, if there is no “True Bill” for criminal prosecution, IA conducts an administrative review to determine whether the officer’s actions were within department policy.

**Illustration 4-I: Disposition of Unnecessary Force Allegations in Formal/Informal External Cases**

| DISPOSITION              | 2005       |             |            |             | 2006       |             |           |             |
|--------------------------|------------|-------------|------------|-------------|------------|-------------|-----------|-------------|
|                          | UF Class I | UF Class II | Total      | %           | UF Class I | UF Class II | Total     | %           |
| Sustained                | 0          | 0           | 0          | 0%          | 0          | 1           | 1         | 1%          |
| Not Sustained            | 0          | 11          | 11         | 9%          | 0          | 8           | 8         | 10%         |
| Exonerated               | 11         | 63          | 74         | 61%         | 1          | 32          | 33        | 39%         |
| Unfounded                | 0          | 14          | 14         | 12%         | 0          | 8           | 8         | 10%         |
| No Finding               | 0          | 14          | 14         | 12%         | 2          | 18          | 20        | 24%         |
| Within Procedure         | 1          | 7           | 8          | 7%          | 1          | 11          | 12        | 14%         |
| No Misconduct Determined | 0          | 0           | 0          | 0%          | 0          | 2           | 2         | 2%          |
| <b>Total Allegations</b> | <b>12</b>  | <b>109</b>  | <b>121</b> | <b>100%</b> | <b>4</b>   | <b>80</b>   | <b>84</b> | <b>100%</b> |

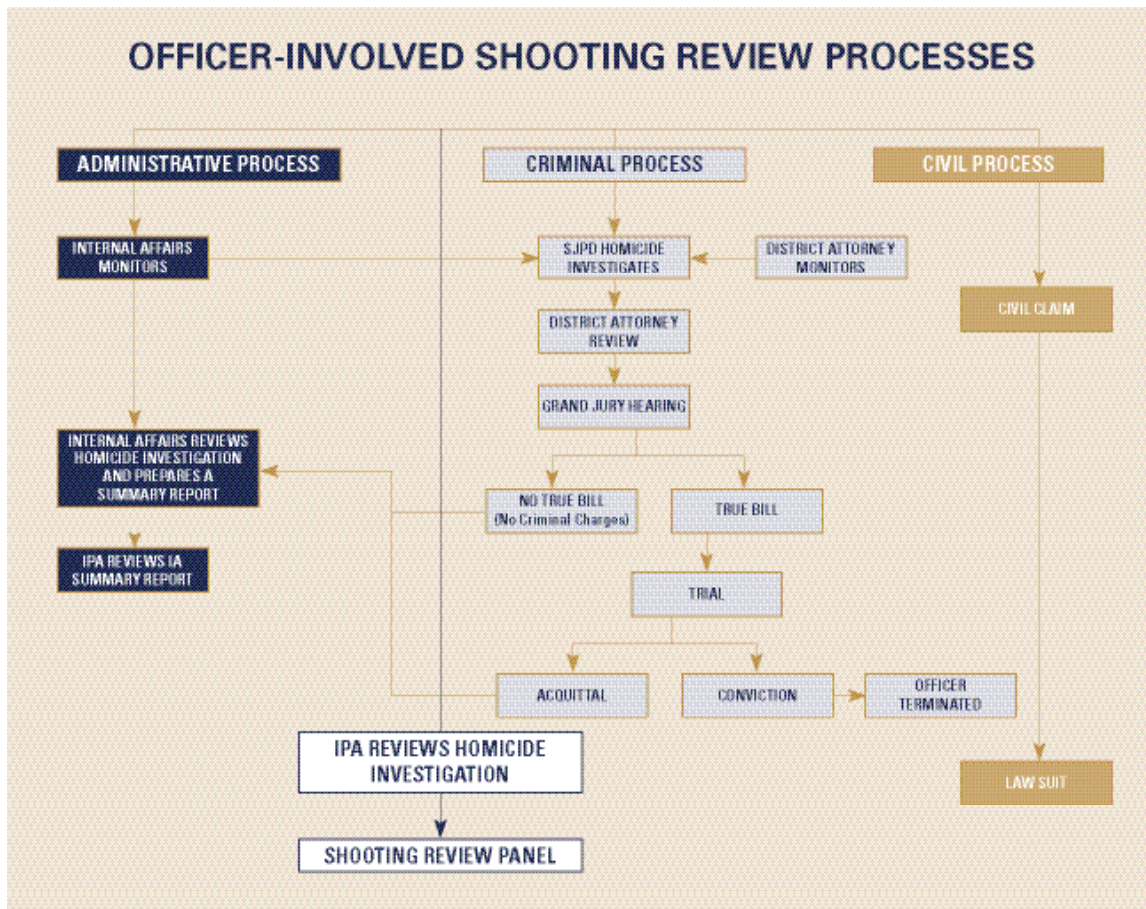
## CHAPTER FOUR | USE OF FORCE ANALYSIS

As a result of recommendations made in the 2003 and 2005 Mid-Year reports, the City Council approved expanding IPA jurisdiction in officer-involved shooting cases.<sup>26</sup> The expansion included:

- the IPA will be notified immediately after an officer-involved shooting occurs so the IPA can respond to the scene and receive a briefing about the case details,
- the IPA will be provided a copy of the IA investigative report, and
- the IPA will be provided a copy of the SJPD Homicide report for policy review in officer involved shooting and death in custody cases.

The final step in the review process is the Officer-Involved Shooting Review Panel, initiated by the SJPD in 1999 following recommendations made by the IPA in its 1998 Year End Report. This panel consists of the Chief of Police and several SJPD command staff, the IPA, and a representative of the City Attorney's Office. The purpose of the Shooting Review Panel is to review the incident to determine if there are any training issues, or if any new policy or procedural changes should be considered.

**Illustration 4-J: Officer-Involved Shooting Review Process**



<sup>26</sup> All IPA recommendations made in the 2003 Mid-Year Report and the 2005 Mid-Year Report, as well as other years, are detailed in **Appendix E**.

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### A. Officer-Involved Shootings in 2006

As indicated in **Illustration 4-K**, there were three officer-involved shootings in 2006. According to procedures developed in 2004, the IPA was called to the scene of the incidents for a briefing regarding the circumstances of the shooting.

Two non-fatal officer-involved shooting incidents occurred during the first six months of 2006, one in February and one in May. Because neither case resulted in a fatality, there were no grand jury hearings. A third officer-involved shooting that occurred in November 2006 resulted in a fatality. A homicide investigation of this incident has been completed and submitted to the District Attorney's office for review.

Administrative reviews of the February and May incidents were conducted; each incident was classified as a "firearms discharge" and each incident was deemed to be within policy. The administrative review of the November 2006 incident is pending. Shooting review panels on these three incidents have not yet occurred.

Of the three officer-involved shootings, one citizen complaint was filed. The citizen alleged that an SJPD officer used unnecessary force; the IPA is in the process of auditing the Internal Affairs investigation of this complaint.

The incidents in February and May involved officers shooting at moving vehicles.

- In the February 2006 incident, SJPD officers had set up a street perimeter in an attempt to capture a parolee. A car entered the perimeter and attempted to drive down the street at a high speed. The officers in the roadway scrambled to get out of the way of the speeding car; one officer fired at the driver. The injured driver continued down the street before stopping.
- In the May 2006 incident, the officer was walking toward a stopped vehicle to initiate contact regarding a possible stolen car. The driver of the car suddenly accelerated in reverse toward the officer. The officer fired two rounds at the driver while simultaneously trying to get out of the way.

In its 2005 Year End Report, the IPA recommended that the SJPD expand its policy regarding shooting at moving vehicles by emphasizing that officers should move out of the way of the vehicle, when possible. In April 2007 the SJPD adopted a more detailed policy which incorporated a majority of the IPA recommendations. See **Chapter 2 Update to Prior Recommendations** for more information outlining the 2005 recommendation and changes to the SJPD policy.

### Illustration 4-K: Officer-Involved Shootings in 2006

| Case | Ethnicity | Mental Illness History? | Citizen Armed? | Type of Weapon | Citizen Shoot at Officer? | Prior Criminal Record? | CIT at Scene? | Citizen's Injuries | Within Policy? | Other Weapons Used |
|------|-----------|-------------------------|----------------|----------------|---------------------------|------------------------|---------------|--------------------|----------------|--------------------|
| 1    | Hispanic  | Unknown                 | No             | Vehicle        | No                        | Unknown                | No            | Wounded            | Yes            | No                 |
| 2    | Caucasian | Unknown                 | Yes            | Vehicle/Gun    | No                        | Yes                    | No            | Wounded            | Yes            | No                 |
| 3    | Caucasian | Yes                     | Yes            | Knife          | N/A                       | Yes                    | No            | Fatal              | Pending        | Unknown            |

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### Illustration 4-L: Fatal Critical Incidents 2006

| Case | Ethnicity | Mental Illness History? | Person Armed? | Police Weapon Used?        | Cause of Death?  | Within Policy? |
|------|-----------|-------------------------|---------------|----------------------------|--|----------------|
| 1    | Hispanic  | Unknown                 | No            | Baton, pepper spray, Taser | Blunt impacts of the head and torso with skull, rib and sternal fractures, intracranial hemorrhages, and brain injuries.<br><b>Contributory cause:</b> Status post multiple Taser device applications.<br><b>Manner of Death:</b> Homicide (Physical altercation with assailant(s) and subsequent physical altercation with police). | Unknown        |
| 2    | Hispanic  | Unknown                 | No            | Taser                      | Bronchopneumonia complicating penetrating chest injury.<br><b>Manner of Death:</b> Accident (passenger of motor vehicle which struck wrought iron fence while evading police).   | Unknown        |

### B. Critical Incidents in 2006

As indicated in **Illustration 4-L** and outlined in the recommendation section of this report, the IPA has identified two fatal critical incidents in 2006 that involved SJPD officers. It is unknown whether the conduct of the involved officers was within policy because the IPA has no jurisdiction and no ability to review reports of those incidents. Details of the specific cases are discussed in **Chapter 2**.

### IV. Crisis Intervention Training and Force-Option Simulator Training

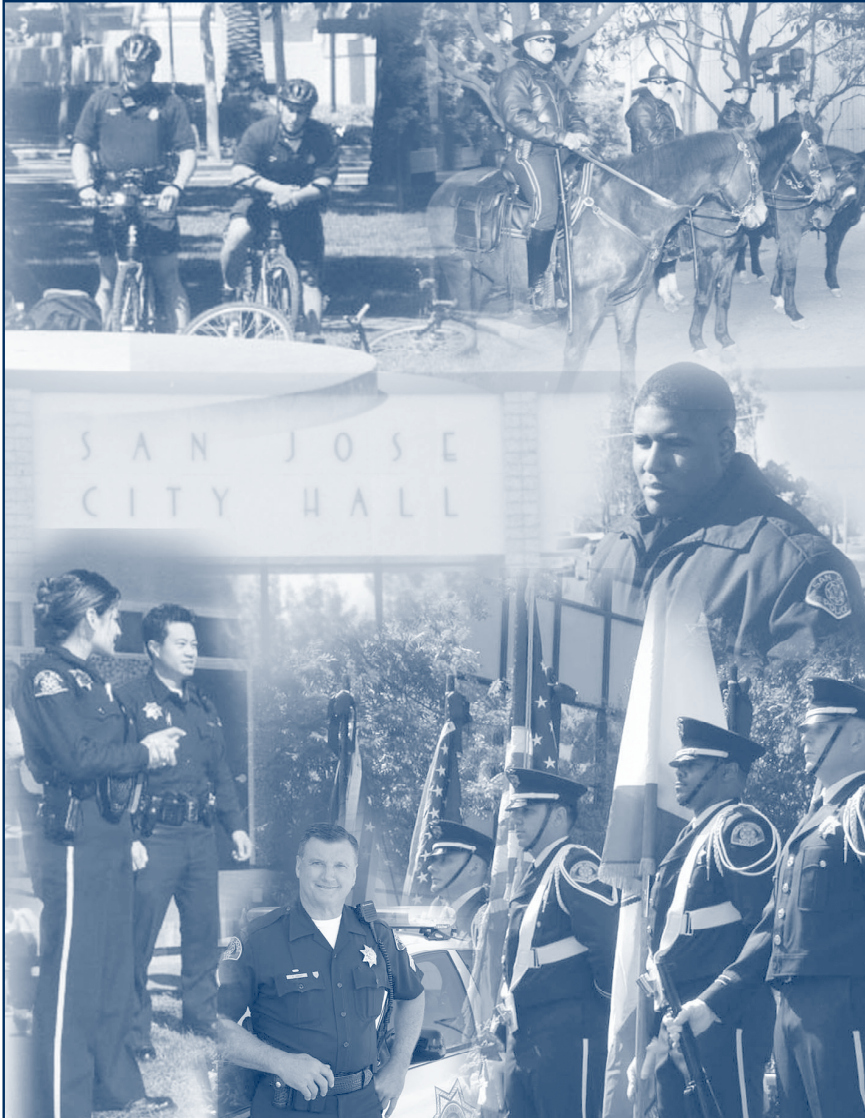
Crisis intervention training teaches officers how to better address situations involving persons who are experiencing some type of mental or emotional crisis, thus reducing the possibility of the officers

having to use force to gain control of a situation. In 2006, 46 San José officers received the 40-hour Crisis Intervention Training (CIT) and there are now 323 CIT-trained officers in San José. The IPA continues to encourage and support this type of training for SJPD officers in an attempt to help reduce the need for officers to use force, including deadly force.

Similarly, SJPD continues to require officers to take a four-hour Force-Option Simulator training as part of the “Continuous Professional Training” (CPT) Program. Each officer takes this training every 18 months. The Force-Option Simulator training utilizes state-of-the-art interactive video simulations of real-life scenarios that require officers to react to life-threatening situations. In 2006, 867 officers received this training.



## SUBJECT OFFICER DEMOGRAPHICS



The SJPD officers portrayed in this collage assisted the IPA in designing informational materials. They are not subject officers.

# Chapter Five

## CHAPTER FIVE | SUBJECT OFFICER DEMOGRAPHICS

The IPA tracks information about officers named in complaints, “subject officers,” in five categories of cases, citizen-initiated, department-initiated, command review, procedural, and policy to determine if there are trends or particular problem areas. Specific areas of interest include the subject officer's gender and years of experience with the SJPd at the time the incident occurred. It is not possible to track this data in inquiry cases because officer information is not identified. Inquiries accounted for 52% of all external complaints filed in 2006. The statistics in this chapter reflect information on 217 officers named in one or more complaints filed in 2006.

### I. Complaints by Gender of Subject Officers

The gender of San José officers named as subject officers in complaints in 2006 is reflected in **Illustration 5-A**. Fourteen female officers were named in complaints, 6%, which is lower than their percentage in the Department, 10%.

**Illustration 5-A: Gender of Subject Officers**

| GENDER | Subject Officers |      | SJPd Sworn Officers |      |
|--------|------------------|------|---------------------|------|
|        |                  | %    |                     | %    |
| Male   | 203              | 94%  | 1205                | 90%  |
| Female | 14               | 6%   | 130                 | 10%  |
| Total  | 217              | 100% | 1335                | 100% |

### II. Years of Experience of Subject Officers

The years of experience for San José police officers receiving complaints in 2006 is displayed in **Illustration 5-B**. Officers with two to four years of experience continue to be named in the highest number of complaints when compared to their representation in the Department. Officers in the two to four year range make up 7% of all officers in the SJPd; however they accounted for 12% of all officers named in complaints filed in 2006. Fifty-five officers, 25% of officers named in complaints, had seven to ten years of experience; 260 officers with this level of experience comprise 19% of the Department.

It is important to note that the severity of complaints filed against officers can vary as reported in **Chapter 3**, with the largest numbers of complaints alleging improper procedure, unnecessary force and rude conduct. During the audit process the types of misconduct alleged and the demographics of the officers involved are studied to identify possible problems, patterns in behavior and other potential areas of concern.

**Illustration 5-B: Years of Experience of Subject Officers**

| YEARS OF EXPERIENCE | Gender of Subject Officers |        | Total Subject Officers | %    | SJPd Sworn Officers |        | Total SJPd Sworn Officers | %    |
|---------------------|----------------------------|--------|------------------------|------|---------------------|--------|---------------------------|------|
|                     | Male                       | Female |                        |      | Male                | Female |                           |      |
| 0- 1+               | 18                         | 0      | 18                     | 8%   | 101                 | 9      | 110                       | 8%   |
| 2- 4+               | 22                         | 3      | 25                     | 12%  | 73                  | 16     | 89                        | 7%   |
| 5- 6+               | 20                         | 3      | 23                     | 11%  | 90                  | 12     | 102                       | 8%   |
| 7-10+               | 54                         | 1      | 55                     | 25%  | 236                 | 24     | 260                       | 19%  |
| 11- 15+             | 40                         | 4      | 44                     | 20%  | 269                 | 26     | 295                       | 22%  |
| 16+                 | 49                         | 3      | 52                     | 24%  | 436                 | 43     | 479                       | 36%  |
|                     | 203                        | 14     | 217                    | 100% | 1205                | 130    | 1335                      | 100% |

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### III. Subject Officers Named in One or More Complaints

**Illustration 5-C** depicts the number of times an individual officer has been named in a complaint. During the 2006 calendar year, 177 San José police officers were named one time in a complaint. All of the 40 officers named in more than one complaint were male; 35 officers were named in two complaints and five were named in three complaints. Three officers were counseled in 2006 as part of the complaint intervention program; see the textbox on the right.

### IV. Ethnicity of Subject Officers

**Illustration 5-D** details the ethnicity of subject officers. In 2006, the ethnicity of the subject officers closely tracked the ethnic breakdown of officers in the Department.

#### Illustration 5-C: Officers Named in Multiple Complaints

| OFFICERS RECEIVING      | NUMBER OF SUBJECT OFFICERS |
|-------------------------|----------------------------|
| 1 Complaint             | 177                        |
| 2 Complaints            | 35                         |
| 3 Complaints            | 5                          |
| 4 Complaints            | 0                          |
| 5 Complaints            | 0                          |
| 6 Complaints            | 0                          |
| <b>Total Complaints</b> | <b>217</b>                 |

#### Illustration 5-D: Ethnicity of Subject Officers

| ETHNICITY                       | Subject Officers | %           | SJPD Sworn Officers | %           |
|---------------------------------|------------------|-------------|---------------------|-------------|
| Native American                 | 2                | 1%          | 6                   | 0.5%        |
| Asian American/Pacific Islander | 18               | 8%          | 115                 | 9%          |
| African American                | 7                | 3%          | 65                  | 5%          |
| Filipino American               | 5                | 2%          | 29                  | 2%          |
| Hispanic/Latino                 | 54               | 25%         | 335                 | 25%         |
| White                           | 129              | 59%         | 778                 | 58%         |
| Not Available                   | 2                | 1%          | 7                   | 0.5%        |
| <b>Total</b>                    | <b>217</b>       | <b>100%</b> | <b>1335</b>         | <b>100%</b> |

### Complaint Intervention Programs

SJPD has an Early Warning System (EWS) to identify officers exhibiting possible problem behavior, and to take corrective action. The EWS flags officers that receive three formal complaints or a combination of five complaints of any type within a 12-month period. Officers meeting these criteria are scheduled to participate in Intervention Counseling (IC). The counseling sessions involve a review of the complaints filed against the subject officer without regard to the finding. The subject officer is asked to meet with his/her supervisor, the Internal Affairs Commander, and the Deputy Chief in his/her chain of command. During these sessions the command staff has an opportunity to informally talk to the officer about personal or work related topics, provide counseling, and recommend training for the subject officer. Intervention Counseling is not discipline and only the fact that a session took place is recorded. This program is negatively impacted by the inquiry classification which removes officer names for tracking purposes.

SJPD has established a Supervisor's Intervention Counseling (SIC) Program to work with the supervisor when three or more complaints are filed against members of his/her team within a six-month period. The program is designed to ensure that a supervisor is aware of the patterns of officer behavior that led to the citizen complaints and to suggest strategies that can be implemented by the supervisor to reduce future complaints.

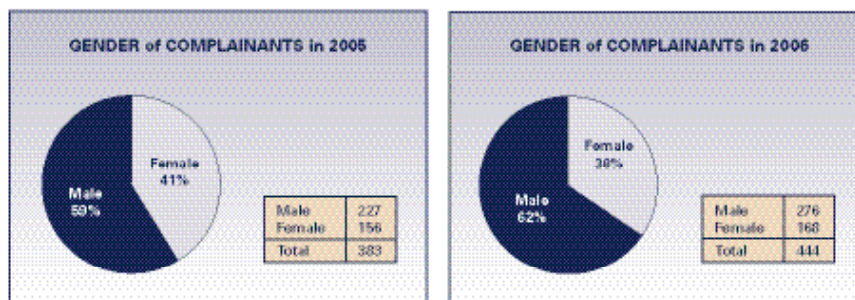
The diversity of San José is one of the City's greatest assets. In an effort to understand how to best serve the community and gain insight into the complainant population, the IPA and IA request basic demographic information regarding each complainant during the intake process. Further information is solicited shortly thereafter with a survey sent by mail. All demographic information requested is voluntary and self reported.

In 2006 over 75% of complainants responded to questions regarding gender, age and ethnicity. Responses to questions regarding complainant demographics are greater in these categories because such information is solicited both at the time of intake and through mailed surveys. Education and occupation information is only requested through the mailed survey, not at the time of intake, and is not provided by all complainants. Information about education and occupation was received from about 15% of complainants in 2006.

### I. Gender of Complainants

**Illustration 6-A** reflects the gender of complainants in 2006. Of the 444 complaints filed, 276, 62% of complainants, were male and 168, 38%, were female. The gender breakdown for San José in the 2000 census was 51% male to 49% female.

**Illustration 6-A: Two-Year Comparison of Complainant Gender**



### II. Ethnicity of Complainants

The ethnicities of individuals filing complaints are identified in **Illustration 6-B**. Over the last few years the IPA has made a concerted effort to obtain information regarding the ethnic backgrounds of all individuals filing complaints. The ethnicity of complainants is collected at the time of intake as well as through surveys. As a result, the ethnicities of complainants were obtained

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**Illustration 6-B: Ethnicity of Complainants from Voluntary Survey and Intake**

| ETHNICITY                  | 2002<br>Surveys | %           | 2003<br>Surveys | %           | 2004<br>Surveys | %           | 2005<br>Surveys/<br>Intake | %           | 2006<br>Surveys/<br>Intake | %           | % of<br>San José<br>Population * |
|----------------------------|-----------------|-------------|-----------------|-------------|-----------------|-------------|----------------------------|-------------|----------------------------|-------------|----------------------------------|
| African American           | 37              | 20%         | 20              | 12%         | 23              | 15%         | 45                         | 15%         | 71                         | 18%         | 2.0%                             |
| Asian/Pacific Islander     | 6               | 3%          | 7               | 4%          | 2               | 1%          | 11                         | 4%          | 14                         | 4%          | 13.5%                            |
| White                      | 65              | 35%         | 52              | 31%         | 42              | 28%         | 76                         | 26%         | 106                        | 27%         | 34.0%                            |
| Filipino                   | 4               | 2%          | 3               | 2%          | 2               | 1%          | 6                          | 2%          | 4                          | 1%          | 2.0%                             |
| Hispanic/Latino            | 63              | 34%         | 72              | 43%         | 58              | 38%         | 129                        | 44%         | 164                        | 42%         | 32.0%                            |
| Native American            | 2               | 1%          | 2               | 1%          | 2               | 1%          | 2                          | 1%          | 3                          | 1%          | 2.0%                             |
| Vietnamese                 | 0               | 0%          | 2               | 1%          | 0               | 0%          | 6                          | 2%          | 6                          | 2%          | 9.0%                             |
| Other                      | 5               | 3%          | 5               | 3%          | 10              | 7%          | 16                         | 5%          | 17                         | 4%          | 5.5%                             |
| Decline/Unknown            | 4               | 2%          | 6               | 4%          | 12              | 8%          | 3                          | 1%          | 5                          | 1%          | 0.0%                             |
| <b>Total Surveys and %</b> | <b>186</b>      | <b>100%</b> | <b>169</b>      | <b>100%</b> | <b>151</b>      | <b>100%</b> | <b>294</b>                 | <b>100%</b> | <b>390</b>                 | <b>100%</b> | <b>100%</b>                      |
| Number of Total Complaints | 359             |             | 295             |             | 335             |             | 383                        |             | 444                        |             |                                  |

\* As reported in the 2004 U.S. Census Bureau American Community Survey

in 385 cases, 87% of the 444 total complaints filed in 2006, a considerable improvement over the 51% obtained in 2004 and 77% in 2005. African American and Hispanic/Latino complainants filed complaints at higher ratios than their representation in the San José community, whereas Asian/Pacific Islander and Vietnamese complainants filed complaints at lower ratios than their representation in the population of San José.<sup>27</sup>

- African American complainants filed 71 complaints in 2006.
- Hispanic/Latino individuals filed 164 complaints in 2006.
- White complainants filed 106 complaints in 2006.

The ethnicities of individuals filing complaints are included in the five-year comparison below.

### III. Age of Complainants

The ages of complainants were also requested at the time of intake and on voluntary surveys.

**Illustration 6-C** reflects the ages of complainants

**Illustration 6-C: Ages of Complainants**

| AGE OF<br>COMPLAINANTS | 2005<br>Surveys/Intake | %           | 2006<br>Surveys/Intake | %           |
|------------------------|------------------------|-------------|------------------------|-------------|
| Under 18               | 10                     | 3%          | 7                      | 2%          |
| 18-30                  | 89                     | 30%         | 112                    | 30%         |
| 31-59                  | 180                    | 60%         | 230                    | 63%         |
| 60+                    | 20                     | 7%          | 19                     | 5%          |
| Decline                | 2                      | 1%          | 0                      | 0%          |
| <b>Total</b>           | <b>301</b>             | <b>100%</b> | <b>368</b>             | <b>100%</b> |

who responded. The table uses four groupings: under 18; 18-30, a spread of 19 years; 31-59, a spread of 28 years; and 60+. The age of complainants this year was available in 368 cases, 83%. There is no reliable source of age data with similar groupings for San José residents; therefore it is not possible to determine whether the ratio of complainants in a particular age group is in proportion with their representation in the San José community. In 2006, the number of complainants within each identified range was consistent with the prior year.

<sup>27</sup> San José population figures in this report are based upon the 2004 U.S. Census Bureau American Community Survey, the most recent data available, which was limited to household populations and excluded the population living in institutions, college dormitories, and other group quarters.



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### IV. Education Level of Complainants

**Illustration 6-D** provides a five-year comparison of the levels of education reported by individuals filing complaints. This demographic information was collected from voluntary survey responses.

### V. Occupation of Complainants

**Illustration 6-E** provides a five-year overview of the range of occupations of complainants responding to the surveys.

**Illustration 6-D: Five-Year Overview of Complainant Education Level**

| EDUCATION LEVEL      | 2002       |             | 2003       |             | 2004       |             | 2005       |             | 2006      |             |
|----------------------|------------|-------------|------------|-------------|------------|-------------|------------|-------------|-----------|-------------|
|                      | Surveys    | %           | Surveys    | %           | Surveys    | %           | Surveys    | %           | Surveys   | %           |
| Graduate Degree      | 22         | 12%         | 24         | 14%         | 17         | 11%         | 16         | 14%         | 10        | 14%         |
| College              | 72         | 39%         | 73         | 43%         | 61         | 40%         | 34         | 30%         | 30        | 41%         |
| High School or Below | 85         | 46%         | 72         | 43%         | 63         | 42%         | 58         | 51%         | 18        | 25%         |
| Decline              | 7          | 4%          | 0          | 0%          | 10         | 7%          | 5          | 4%          | 15        | 21%         |
| <b>Total</b>         | <b>186</b> | <b>100%</b> | <b>169</b> | <b>100%</b> | <b>151</b> | <b>100%</b> | <b>113</b> | <b>100%</b> | <b>73</b> | <b>100%</b> |

**Illustration 6-E: Five-Year Overview of Occupations of Complainants**

| OCCUPATION           | 2002       |             | 2003       |             | 2004       |             | 2005       |             | 2006      |             |
|----------------------|------------|-------------|------------|-------------|------------|-------------|------------|-------------|-----------|-------------|
|                      | Surveys    | %           | Surveys    | %           | Surveys    | %           | Surveys    | %           | Surveys   | %           |
| Administration       | 33         | 21%         | 31         | 18%         | 22         | 15%         | 5          | 4%          | 6         | 8%          |
| Public Employees     | 5          | 3%          | 0          | 0%          | 1          | 1%          | 1          | 1%          | 21        | 29%         |
| Disabled             | 10         | 6%          | 5          | 3%          | 5          | 3%          | 9          | 8%          | 3         | 4%          |
| Homemaker            | 5          | 3%          | 0          | 0%          | 4          | 3%          | 3          | 3%          | 0         | 0%          |
| Laborer              | 58         | 36%         | 77         | 45%         | 74         | 49%         | 44         | 39%         | 18        | 25%         |
| Professional         | 8          | 5%          | 18         | 10%         | 6          | 4%          | 16         | 14%         | 3         | 4%          |
| Retired              | 2          | 1%          | 5          | 3%          | 2          | 1%          | 3          | 3%          | 4         | 5%          |
| Self-Employed        | 1          | 1%          | 4          | 2%          | 2          | 1%          | 3          | 3%          | 7         | 10%         |
| Student              | 16         | 10%         | 11         | 6%          | 12         | 8%          | 15         | 13%         | 7         | 10%         |
| Unemployed           | 6          | 4%          | 9          | 5%          | 4          | 3%          | 4          | 4%          | 1         | 1%          |
| Decline              | 15         | 9%          | 12         | 7%          | 19         | 13%         | 9          | 8%          | 3         | 4%          |
| <b>Total Surveys</b> | <b>159</b> | <b>100%</b> | <b>172</b> | <b>100%</b> | <b>151</b> | <b>100%</b> | <b>112</b> | <b>100%</b> | <b>73</b> | <b>100%</b> |



Outreach to the community is a mandated and essential function of the Office of the Independent Police Auditor (IPA). From its inception the IPA recognized that outreach would be crucial to raising awareness of the services provided by the IPA and in establishing public confidence in the agency, as well as the complaint process. Over the ensuing 13 years, the IPA has made significant inroads in gaining trust, respect, and support from the public, elected officials, and members of the San José Police Department. The IPA conducts widespread outreach in order to educate the community about the mission and functions of the IPA office, assess the needs and concerns of diverse communities, and make services visible and accessible to the public.

The IPA website [www.sanjoseca.gov/ipa/](http://www.sanjoseca.gov/ipa/) has become a vital outreach mechanism. It offers IPA outreach materials and reports, information about the complaint process, and general information about civilian oversight of law enforcement. The web site proved popular during 2006, providing information to 50,244 visitors.

### I. Outreach Activities

Because awareness of the citizen complaint process is critical in raising public confidence in the IPA and the SJPDP, staying connected to the community has been an ongoing priority. Outreach activities have also kept the IPA informed of issues



Barbara Attard, Chief of Police Robert Davis, and Human Rights Commission Chairperson Robert Bailey receive public testimony at community forum.

*Photograph courtesy of Lawrence Whitcomb*

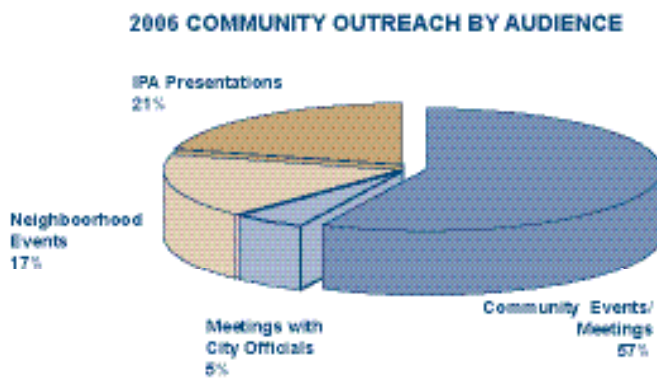
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important to the residents of San José. The IPA is committed to providing on-going face-to-face contact with individuals, groups and organizations throughout the city of San José. Outreach efforts include:

- Participating in a variety of community events and resource fairs
- Reaching out to youth in schools, community centers, and colleges
- Participating in television and radio programs
- Holding press conferences and press interviews
- Making presentations to neighborhood associations and organizations
- Organizing community forums
- Preparing and providing resource information

Through these varied activities, the IPA staff attended community events reaching out to

**Illustration 7-A: Community Outreach in 2006**



| TYPES OF COMMUNITY OUTREACH  | Events     | %           | Audience    | %           |
|------------------------------|------------|-------------|-------------|-------------|
| Community Events/Meetings    | 93         | 42%         | 4015        | 57%         |
| Meetings with City Officials | 46         | 21%         | 358         | 5%          |
| Neighborhood Specific Events | 14         | 6%          | 1192        | 17%         |
| IPA Presentations            | 40         | 18%         | 1468        | 21%         |
| Media/Press Conferences      | 27         | 12%         | Unknown     | Unknown     |
| <b>Total</b>                 | <b>220</b> | <b>100%</b> | <b>7033</b> | <b>100%</b> |



*Photograph courtesy of El Observador*

approximately 7,033 community members in 2006. The IPA participated in 220 outreach events in 2006, more than double the 75 events attended in 2005. See **Illustration 7-A**.

The largest category of outreach in 2006 was that of Community Events/Meetings, with 93, 42% of the total 220 events for the year. This category also captured the largest number of individuals during 2006, reaching 4,015 people, 57% of the total audience of 7,033.

In 2006, the IPA staff presented outreach information to approximately 1,468 community members. The IPA has a strong commitment to reaching individuals in diverse settings who may benefit from services of the IPA office. Outreach in 2006 was offered to individuals who were homeless, veterans, survivors of domestic violence, immigrants, disabled, members of ethnic minority groups, and to youth.

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The IPA participates in a number of annual events that specifically focus on particular neighborhoods within the larger San José community. The IPA participated in 14 such events in 2006 and reached 1,192 individuals.

### II. Media

One of the most effective mechanisms for public outreach is the media. The IPA has made an effort to reach the San José community through newspaper, radio and television interviews. It is not possible to quantify the number of individuals reached in 2006 via the 27 media related interviews and press conferences that occurred; however, IPA issues, quotations, and events were mentioned in several local newspapers including the *San José Mercury News*, *El Observador* and the *Blossom Hill News*. In addition, interviews with the IPA were captured on a number of local radio and television station programs.

### III. Youth and Ethnic Minority Outreach

Over the last several years the IPA has prioritized outreach to vulnerable populations such as youth, immigrants, and ethnic minority communities. Of the 220 outreach events the IPA participated in during 2006, 79, 36% involved the priority populations. See **Illustration 7-B**.

The IPA recognizes the importance of educating youth about police practices and informing them about the services of the IPA. IPA presentations to



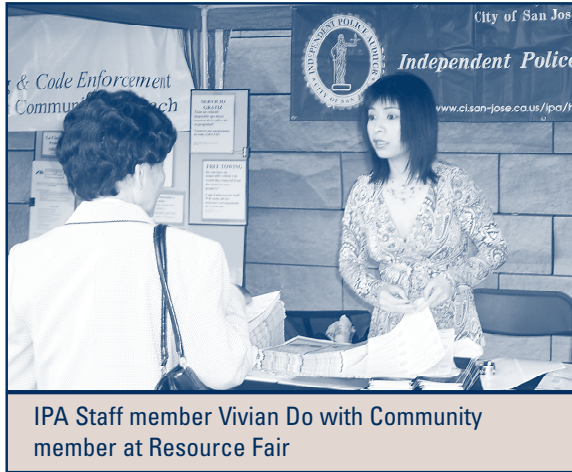
youth are interactive; young people are given an opportunity to express their concerns about police issues and receive valuable information about what to do (and what not to do) when interacting with police officers. In 2006 the IPA staff made 38 presentations to youth audiences and those that work with youth, 17% of the 220 total outreach events for the year. The IPA has partnered with agencies such as San José's Clean Slate Program, the Striving Towards Achievement and New Direction Program (STAND), the Santa Clara County Girl Scouts "Got Choices" program, and Fresh Lifelines for Youth (FLY), in order to make contact with young people in diverse settings such as Juvenile Hall, residential facilities, schools and community centers.

In 2006 the IPA partnered with the San José Police Department and the Office of the City Manager to publish 10,000 copies of a revised edition of "A Student's Guide to Police Practices" (Guide). The Guide is an essential tool to educate youth about their rights and responsibilities when interacting

**Illustration 7-B: Outreach to Youth, Immigrants & Ethnic Minority Communities in 2006**

| TYPES OF COMMUNITY OUTREACH  | Youth Outreach |             |             |             | Ethnic Minority Outreach |             |             |             |
|------------------------------|----------------|-------------|-------------|-------------|--------------------------|-------------|-------------|-------------|
|                              | Events         | %           | Audience    | %           | Events                   | %           | Audience    | %           |
| Community Events/Meetings    | 17             | 45%         | 533         | 50%         | 23                       | 56%         | 1462        | 62%         |
| Meetings with City Officials | 0              | 0%          | 0           | 0%          | 0                        | 0%          | 0           | 0%          |
| Neighborhood Events          | 2              | 5%          | 44          | 4%          | 4                        | 10%         | 713         | 30%         |
| IPA Presentations            | 19             | 50%         | 499         | 46%         | 10                       | 24%         | 187         | 8%          |
| Media/Press Conferences      | 0              | 0%          | 0           | 0%          | 4                        | 10%         | Unknown     | Unknown     |
| <b>Total</b>                 | <b>38</b>      | <b>100%</b> | <b>1076</b> | <b>100%</b> | <b>41</b>                | <b>100%</b> | <b>2362</b> | <b>100%</b> |

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with police officers. Popular among youth, parents and teachers, the booklet contains fundamental information about police practices, as well as information on drugs, trespassing, curfew, profile stops, conduct on school grounds, community resources, and information on filing a complaint. The Guide is available in English, Spanish, and Vietnamese, both in print and on the IPA website ([www.sanjoseca.gov/ipa/](http://www.sanjoseca.gov/ipa/)), as well as on the National Association for Civilian Oversight of Law Enforcement's website ([www.NACOLE.org](http://www.NACOLE.org)).

San José is a diverse city comprised of individuals from numerous ethnic backgrounds. In order to ensure that local minority communities are aware of IPA services, the IPA participated in 41 outreach events involving ethnic minorities in 2006, 19% of the total 220 IPA outreach events for the year. The IPA participated in large events such as the Refugee and Immigrant Forum of Santa Clara County and La Raza Roundtable Meetings, as well as one-on-one meetings with representatives from organizations such as the National Association for the Advancement of Colored People (NAACP) and the Services Immigrant Rights and Education Network (SIREN). Presentations were also offered to staff or clients of local community organizations such as Asian Americans for Community Involvement (AACI) and the Mexican American Community Services Agency (MACSA).

It should be noted that a large number of youth, immigrants, and ethnic minority members were also a part of general outreach events; however, it is not possible to specify the number since such data is not collected at community events.

### IV. Community Forums

The IPA has organized and/or participated in several community informational forums in the past thirteen years. The IPA has played a key role in bringing the community and police together to discuss controversial issues and has worked to foster relationships with community leaders while maintaining an objective perspective. IPA forums offer community members an opportunity to raise issues and provide critical information to the IPA regarding community concerns related to police practices in San José.

A community forum sponsored by the IPA and the City's Human Rights Commission (HRC) and funded by the City Manager's Office was held in November of 2006 at San José City College, in conjunction with the Community Arts and Lectures Program, and attracted a diverse audience, many of them college students. Approximately 250 people attended the forum and 45 individuals offered testimony. IPA Barbara Attard and HRC Chairperson Robert Bailey were joined by Chief of Police Robert Davis to receive public testimony. The issues alleged by speakers at the forum with the greatest frequency were: the need for improved officer communication skills, disrespectful and discourteous behavior community members associate with the SJPd, the existence of racial profiling, and the ineffectiveness of the existing complaint process. As a result of this forum and a second one held in January of 2007, the IPA and the HRC are submitting recommendations requesting that the City of San José consider taking steps to address the issues discussed by members of the community.



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### V. The San José IPA – An Early Auditor Model of Oversight

The San José Independent Police Auditor was one of the first auditor models of civilian oversight established in the United States. Created after much research and deliberation, the IPA was considered a cutting-edge oversight agency in 1993. Through the years the IPA model has received national recognition, in large part due to the success of the office in making substantive recommendations for policy change. In the ensuing years the auditor model of oversight has evolved. **Chapter 2** discusses recommendations to strengthen the oversight authority of the IPA, improve its effectiveness, and increase community confidence in the office.



Barbara Attard, attorney David Nevin, and NACOLE Board Member Charles Reynolds at the 12th Annual NACOLE Conference in Boise, Idaho.

### VI. IPA Involvement in the National Association for Civilian Oversight of Law Enforcement (NACOLE)

IPA Barbara Attard served as the president of the National Association for Civilian Oversight of Law Enforcement (NACOLE) Board of Directors for

2006 and helped spearhead a project to develop standards for civilian oversight professionals. At the 2006 Conference the membership adopted a NACOLE Code of Ethics (Code) for oversight practitioners. The IPA has adopted this Code as a standard for the staff of the Office of the Independent Police Auditor. See **Appendix C** for the full Code.

The IPA will be hosting the Thirteenth Annual NACOLE Conference in San José, September 25–28, 2007.

In 2006 the IPA was invited to lecture regarding the NACOLE professional standards project at the Canadian Association of Civilian Oversight of Law Enforcement (CACOLE) Conference in Vancouver, Canada, and regarding civilian oversight models at the National Association of Local Government Auditors (NALGA) Conference in San José.

### VI. Independent Police Auditor Advisory Committee (IPAAC)

Because of the City's size and diversity, the IPA seeks connections within the community to help identify police-related issues and disseminate information regarding the services provided by the IPA. The Independent Police Auditor Advisory Committee (IPAAC) was established in 1999 with the purpose of identifying, mobilizing and coordinating resources to assure maximum public, private, agency and individual commitment to effective police oversight. Members of the advisory committee include community leaders, grassroots organizers, and committed individuals representing the Vietnamese, Hispanic/Mexican/Latino, African American, Filipino, Asian American, Islamic, Sikh, Gay/Lesbian, business, nonprofit and legal communities of San José. The support, advice, and insights offered by the IPAAC have been an integral part of the success of the IPA. For more information regarding IPAAC, see page iii.

# Chapter Eight

**T**his chapter presents data reflecting the complaints, allegations, inquiries, and citizen contacts received from each of the city's ten council districts. **Illustration 8-A** lists the council districts and the types of complaints that originated in each district. The distribution indicates the location where the incident occurred, not necessarily where the complainant resides. The category Unknown/Outside City Limits represents incidents in which the location could not be identified or did not occur within the City of San José. The locations of incidents in inquiries are not always provided, and citizen contacts usually do not specify a location.

Complaints are classified into one of seven categories: citizen initiated, department initiated, command review, procedural, inquiry, policy, and citizen contacts (which are not complaints against the SJPd). The IPA has raised concerns over the last two years about the increased use of the inquiry classification because officer names are removed and cases are not tracked for the SJPd early warning system, oversight by the IPA, discovery in criminal cases, and risk management purposes.<sup>28</sup> This practice continued in 2006 with 233 of 444 external complaints, 52%, classified as inquiries. The IPA is making recommendations to address this concern. See **Chapter 2** for the complete text of this year's recommendations.

### I. Cases by Council District in 2006

**Illustration 8-A** reports the distribution of complaints and contacts received by the IPA and Internal Affairs in 2006. The chart identifies the council district as well as the classification of the complaint received. District 3, which includes the downtown area, continues to generate the largest number of complaints. Complaints across the remainder of the city appear to be fairly equally divided.

The large number of cases Unknown/Outside City Limits, 165 up from 132 in 2005, is a result of a general increase in calls and the inclusion of inquiries and citizen contacts which often do not identify a location.

<sup>28</sup>See the text box in **Chapter 3 - Classification is Key** for more information.



## CHAPTER EIGHT | CASES BY COUNCIL DISTRICT

**Illustration 8-A: Reported Incidents By Council District (Including Citizen Contacts)**

| COUNCIL DISTRICTS              | CI         | DI        | CR       | PO        | PR        | IQ         | CW       | NB*       | CC        | Total Cases | %           |
|--------------------------------|------------|-----------|----------|-----------|-----------|------------|----------|-----------|-----------|-------------|-------------|
| District 1                     | 4          | 0         | 0        | 0         | 2         | 3          | 0        | 0         | 0         | 9           | 2%          |
| District 2                     | 7          | 1         | 0        | 0         | 2         | 10         | 0        | 0         | 1         | 21          | 4%          |
| District 3                     | 35         | 20        | 0        | 6         | 16        | 55         | 1        | 2         | 8         | 143         | 26%         |
| District 4                     | 7          | 0         | 1        | 0         | 2         | 7          | 0        | 0         | 4         | 21          | 4%          |
| District 5                     | 8          | 1         | 0        | 0         | 6         | 15         | 2        | 1         | 5         | 38          | 7%          |
| District 6                     | 11         | 3         | 0        | 1         | 8         | 22         | 0        | 3         | 1         | 49          | 9%          |
| District 7                     | 10         | 2         | 0        | 1         | 12        | 11         | 1        | 3         | 1         | 41          | 7%          |
| District 8                     | 3          | 1         | 0        | 1         | 3         | 12         | 0        | 1         | 3         | 24          | 4%          |
| District 9                     | 5          | 0         | 0        | 0         | 8         | 8          | 1        | 0         | 4         | 26          | 5%          |
| District 10                    | 5          | 0         | 0        | 1         | 5         | 8          | 0        | 0         | 3         | 22          | 4%          |
| Unknown/Outside of City Limits | 12         | 6         | 0        | 0         | 12        | 82         | 2        | 0         | 51        | 165         | 30%         |
| <b>Total Cases Received</b>    | <b>107</b> | <b>34</b> | <b>1</b> | <b>10</b> | <b>76</b> | <b>233</b> | <b>7</b> | <b>10</b> | <b>81</b> | <b>559</b>  | <b>100%</b> |

\*The No Boland classification was eliminated in May 2006 following court decision.

|                                    |                          |                        |
|------------------------------------|--------------------------|------------------------|
| CI= Citizen-Initiated Complaint    | PO= Policy Complaint     | CW= Complaint Withdraw |
| DI= Department-Initiated Complaint | PR= Procedural Complaint | NB= No Boland          |
| CR= Command Review Complaint       | IQ= Inquiry              | CC= Citizen Contact    |

### II. Five-Year Comparison

**Illustration 8-B** shows a comparative five-year analysis of all cases received, identified by Council District. The numbers reported in this table also include citizen contacts which, while they do not

reflect a complaint about the SJPd, reflect a growing awareness of the Office of the Independent Police Auditor and SJPd Internal Affairs Unit and the availability of these offices to accept and respond to questions and complaints from the community.

**Illustration 8-B: Five-Year Overview of Reported Incidents by Council District (Including Citizen Contacts)**

| COUNCIL DISTRICTS           | 2002       | %           | 2003       | %           | 2004       | %           | 2005       | %           | 2006       | %           |
|-----------------------------|------------|-------------|------------|-------------|------------|-------------|------------|-------------|------------|-------------|
| District 1                  | 11         | 3%          | 6          | 2%          | 16         | 4%          | 15         | 3%          | 9          | 2%          |
| District 2                  | 34         | 8%          | 35         | 9%          | 21         | 5%          | 25         | 5%          | 21         | 4%          |
| District 3                  | 162        | 38%         | 122        | 31%         | 116        | 29%         | 123        | 25%         | 143        | 26%         |
| District 4                  | 17         | 4%          | 32         | 8%          | 21         | 5%          | 19         | 4%          | 21         | 4%          |
| District 5                  | 37         | 9%          | 47         | 12%         | 35         | 9%          | 42         | 9%          | 38         | 7%          |
| District 6                  | 39         | 9%          | 43         | 11%         | 28         | 7%          | 35         | 7%          | 49         | 9%          |
| District 7                  | 37         | 9%          | 27         | 7%          | 21         | 5%          | 37         | 8%          | 41         | 7%          |
| District 8                  | 25         | 6%          | 8          | 2%          | 15         | 4%          | 21         | 4%          | 24         | 4%          |
| District 9                  | 18         | 4%          | 18         | 5%          | 19         | 5%          | 17         | 3%          | 26         | 5%          |
| District 10                 | 15         | 3%          | 22         | 6%          | 23         | 6%          | 21         | 4%          | 22         | 4%          |
| Unknown/Outside City Limits | 35         | 8%          | 39         | 10%         | 81         | 20%         | 132        | 27%         | 165        | 30%         |
| <b>Total Cases Received</b> | <b>430</b> | <b>100%</b> | <b>399</b> | <b>100%</b> | <b>396</b> | <b>100%</b> | <b>487</b> | <b>100%</b> | <b>559</b> | <b>100%</b> |

## CHAPTER EIGHT | CASES BY COUNCIL DISTRICT

### III. Unnecessary Force Allegations by Council District

Unnecessary force complaints are divided into two groups: Class I includes allegations of unnecessary force causing serious bodily injury that require medical care. Class II complaints include the remainder of unnecessary force allegations. Most complaints alleging unnecessary force are classified and investigated as formal complaints. However, in the last two years an increasing number of complaints involving unnecessary force allegations have been handled informally or as inquiries by Internal Affairs. The IPA is making recommendations to change the process to ensure that complaints are classified based upon objective criteria and increasing accountability of these cases.<sup>29</sup>

The highest number of unnecessary force complaints reported in 2006 was in District 3. This district generated 31 complaints, 32% of the total number of unnecessary force complaints filed.

**Illustrations 8-C and 8-D** present the cases alleging unnecessary force in 2006 by the Council District in which they were reported to have occurred. The cases are presented in two tables.

**Illustration 8-C** reports the total number of unnecessary force complaints filed in 2006.

**Illustration 8-D** presents the number of unnecessary force complaints classified by Internal Affairs as inquiries. For a more detailed analysis of unnecessary force complaints see **Chapter 4**.

#### Illustration 8-C: Two-Year Comparison of Unnecessary Force Complaints Reported By Council District

| COUNCIL DISTRICTS                   | 2005       |             |             |             | 2006       |             |             |             |
|-------------------------------------|------------|-------------|-------------|-------------|------------|-------------|-------------|-------------|
|                                     | UF Class I | UF Class II | Total Cases | %           | UF Class I | UF Class II | Total Cases | %           |
| District 1                          | 0          | 1           | 1           | 1%          | 0          | 0           | 0           | 0%          |
| District 2                          | 1          | 5           | 6           | 7%          | 0          | 3           | 3           | 3%          |
| District 3                          | 2          | 31          | 33          | 40%         | 5          | 26          | 31          | 32%         |
| District 4                          | 0          | 2           | 2           | 2%          | 0          | 4           | 4           | 4%          |
| District 5                          | 1          | 8           | 9           | 11%         | 1          | 9           | 10          | 10%         |
| District 6                          | 0          | 5           | 5           | 6%          | 1          | 11          | 12          | 12%         |
| District 7                          | 1          | 9           | 10          | 12%         | 1          | 14          | 15          | 15%         |
| District 8                          | 0          | 4           | 4           | 5%          | 1          | 2           | 3           | 3%          |
| District 9                          | 0          | 2           | 2           | 2%          | 1          | 4           | 5           | 5%          |
| District 10                         | 0          | 4           | 4           | 5%          | 2          | 5           | 7           | 7%          |
| Unknown/Outside of City Limits      | 0          | 6           | 6           | 7%          | 1          | 6           | 7           | 7%          |
| <b>Total UF Complaints Received</b> | <b>5</b>   | <b>77</b>   | <b>82</b>   | <b>100%</b> | <b>13</b>  | <b>84</b>   | <b>97</b>   | <b>100%</b> |

<sup>29</sup>See **IPA Recommendations** in **Chapter 2**.

## CHAPTER EIGHT | CASES BY COUNCIL DISTRICT

**Illustration 8-D: Two-Year Comparison of the Unnecessary Force Cases Classified as Inquiries<sup>30</sup>**

| COUNCIL DISTRICTS                   | 2005*                |                       |                    |             | 2006                 |                       |                    |             |
|-------------------------------------|----------------------|-----------------------|--------------------|-------------|----------------------|-----------------------|--------------------|-------------|
|                                     | UF Class I Inquiries | UF Class II Inquiries | Total UF Inquiries | %           | UF Class I Inquiries | UF Class II Inquiries | Total UF Inquiries | %           |
| District 1                          |                      |                       |                    | 0%          |                      | 1                     | 1                  | 4%          |
| District 2                          | 1                    |                       | 1                  | 8%          |                      |                       |                    | 0%          |
| District 3                          |                      | 4                     | 4                  | 33%         | 2                    | 6                     | 8                  | 32%         |
| District 4                          |                      |                       |                    | 0%          |                      | 1                     | 1                  | 4%          |
| District 5                          |                      | 2                     | 2                  | 17%         |                      | 2                     | 2                  | 8%          |
| District 6                          |                      |                       |                    | 0%          | 1                    | 2                     | 3                  | 12%         |
| District 7                          |                      | 2                     | 2                  | 17%         |                      | 5                     | 5                  | 20%         |
| District 8                          |                      |                       |                    | 0%          |                      |                       |                    | 0%          |
| District 9                          |                      | 1                     | 1                  | 8%          | 1                    | 1                     | 2                  | 8%          |
| District 10                         |                      |                       |                    | 0%          |                      | 1                     | 1                  | 4%          |
| Unknown/Outside of City Limits      |                      | 2                     | 2                  | 17%         |                      | 2                     | 2                  | 8%          |
| <b>Total UF Complaints Received</b> | <b>1</b>             | <b>11</b>             | <b>12</b>          | <b>100%</b> | <b>4</b>             | <b>21</b>             | <b>25</b>          | <b>100%</b> |

\* 10 inquiries recorded in 2005 had no allegations delineated.

### Comparative Complaint Information from Other US Cities

At year end 2005 the Mayor and City Council requested comparative population and complaint data from other communities. The table below provides information from a variety of cities, both locally and nationwide. As has been demonstrated in a recent study compiled by SJPD, complaints are collected and classified differently by law enforcement agencies locally and nationally. The wide variations in the complaints relative to the number of officers and population in the jurisdictions below confirms this.

Effective law enforcement, and the analysis of complaints arising therefrom require consideration of many variables. An accurate analysis of comparative complaint information must be undertaken with the assistance of sociologists trained to enumerate the appropriate variables and should include a complete analysis and comparison of these variables.

| City/State        | Population | # Officers | Complaints |
|-------------------|------------|------------|------------|
| Berkeley, CA      | 108,000    | 200        | 100        |
| Boise, ID         | 198,500    | 310        | 290        |
| Denver, CO        | 570,000    | 1500       | 620        |
| Oakland, CA       | 400,619    | 730        | 1000       |
| Philadelphia, PA  | 1,500,000  | 6,800      | 800        |
| San Francisco, CA | 792,700    | 2000       | 1000       |
| Seattle, WA       | 578,700    | 1288       | 558        |
| San José, CA      | 950,000    | 1400       | 444        |
| Washington DC     | 550,000    | 3800       | 400        |

<sup>30</sup> See text box in **Chapter 3-Classification Is Key** for more information.

## CONCLUSION

# Conclusion

**T**his 2006 Year End Report documents the work of the IPA in oversight of the Internal Affairs process, in outreach efforts in the community, and in large part focuses on policy recommendations. The breadth of the policy recommendations in this report reflect the IPA assessment that the current complaint process and IPA authority in oversight of the IA process is in need of strengthening. The report discusses IPA concerns that the present system fails to adequately investigate many citizen complaints, it provides only limited effective risk management tools, and it does not allow independent oversight of police incidents which warrant examination.

Over the last year, much of the work of the IPA focused on the complaint classification and investigation process. Since the 2005 Year End Report, the IPA has documented concerns about the classification of complaints, particularly in cases in which misconduct allegations are classified as “inquiry”; such classification affords minimal investigation and tracking of officer misconduct. IPA concerns about the inquiry classification remain unmitigated; over the last two years, more than half of all complaints received were classified as inquiry. In this 2006 Year End Report, the IPA recommends that a revised complaint process be developed to ensure that classification is based upon objective consistent criteria.

This report also discusses the investigation of critical incidents in which an officer’s use of force or any other Department action results in death or serious injury. Currently, the authority of the IPA to review critical incidents is limited to those incidents in which an officer’s use of a firearm caused death or injury. In this 2006 End Year Report, the IPA defines the parameters of critical incidents, recommends that the SJPd be required to investigate critical incidents, and further recommends that the IPA be mandated to review that investigation.

The mission of the IPA is to ensure that SJPd complaint investigations are thorough, objective, and fair; this report includes data on complaints audited and concerns associated with the complaint process. The value of such civilian oversight of local law enforcement to the San José community cannot be over-emphasized. Another mission of the IPA is to conduct outreach to the community providing information about IPA services and the complaint process; this report shows that the IPA staff attended community events reaching out to approximately 7,033 community members in 2006.

The IPA is grateful for the opportunity to perform its mandated function. It is through a cooperative relationship with the San José Police Department and the collaboration of members of the community that the benefits of civilian oversight are fully achieved.

## APPENDIX A

### SAN JOSÉ MUNICIPAL CODE CHAPTER 8.04 AND SAN JOSÉ CITY CHARTER §809

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#### SAN JOSÉ MUNICIPAL CODE CHAPTER 8.04

##### OFFICE OF THE INDEPENDENT POLICE AUDITOR

###### 8.04.010 Duties and responsibilities.

In addition to the functions, powers and duties set forth elsewhere in this code, the independent police auditor shall have the duties and responsibilities set forth in this section.

- A. Review of internal investigation complaints. The police auditor shall review police professional standards and conduct unit investigations of complaints against police officers to determine if the investigation was complete, thorough, objective and fair.
  - 1. The minimal number of complaints to be reviewed annually are:
    - a. All complaints against police officers which allege excessive or unnecessary force; and
    - b. No less than twenty percent of all other complaints.
  - 2. The police auditor may interview any civilian witnesses in the course of the review of police professional standards and conduct unit investigations.
  - 3. The police auditor may attend the police professional standards and conduct unit interview of any witness including, but not limited to, police officers. The police auditor shall not directly participate in the questioning of any such witness but may suggest questions to the police professional standards and conduct unit interviewer.
  - 4. The police auditor shall make a request, in writing, to the police chief for further investigation whenever the police auditor concludes that further investigation is warranted. Unless the police auditor receives a satisfactory written response from the police chief, the police auditor shall make a request, in writing, for further investigation to the city manager.
- B. Review of officer-involved shootings. The police auditor shall participate in the police department's review of Officer-Involved shootings.
- C. Community function.
  - 1. Any person may, at his or her election, file a complaint against any member of the police department with the independent auditor for investigation by the police professional standards and conduct unit.
  - 2. The independent police auditor shall provide timely updates on the progress of police professional standards and conduct unit investigations to any complainant who so requests.
- D. Reporting function. The police auditor shall file annual public reports with the city clerk for transmittal to the city council which shall:
  - 1. Include a statistical analysis, documenting the number of complaints by category, the number of complaints sustained and the actions taken.
  - 2. Analyze trends and patterns.
  - 3. Make recommendations.

## APPENDIX A

### SAN JOSÉ MUNICIPAL CODE CHAPTER 8.04 AND SAN JOSÉ CITY CHARTER §809

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- E. Confidentiality. The police auditor shall comply with all state laws requiring the confidentiality of police department records and information as well as the privacy rights of all individuals involved in the process. No report to the city council shall contain the name of any individual police officer.

(Ords. 25213, 25274, 25922.)

#### **8.04.020 Independence of the police auditor.**

- A. The police auditor shall, at all times, be totally independent and requests for further investigations, recommendations and reports shall reflect the views of the police auditor alone.
- B. No person shall attempt to undermine the independence of the police auditor in the performance of the duties and responsibilities set forth in Section 8.04.010, above.

(Ord. 25213.)

### **SAN JOSÉ CITY CHARTER § 809**

#### **OFFICE OF THE INDEPENDENT POLICE AUDITOR**

The Office of the Independent Police Auditor is hereby established. The Independent Police Auditor shall be appointed by the Council. Each such appointment shall be made as soon as such can reasonably be done after the expiration of the latest incumbent's term of office. Each such appointment shall be for a term ending four (4) years from and after the date of expiration of the immediately preceding term; provided, that if a vacancy should occur in such office before the expiration of the former incumbent's terms, the Council shall appoint a successor to serve only for the remainder of said former incumbent's term.

The office of Independent Police Auditor shall become vacant upon the happening before the expiration of his or her term of any of the events set forth in subsections (a), (b), (c), (d), (e), (h), (i), (j), (k) and (l) of Section 409 of this Charter. The Council, by resolution adopted by not less than ten (10) of its members may remove an incumbent from the office of the Independent Police Auditor, before the expiration of his or her term, for misconduct, inefficiency, incompetence, inability or failure to perform the duties of such office or negligence in the performance of such duties, provided it first states in writing the reasons for such removal and gives the incumbent an opportunity to be heard before the Council in his or her own defense; otherwise, the Council may not remove an incumbent from such office before the expiration of his or her term.



## APPENDIX A

### SAN JOSÉ MUNICIPAL CODE CHAPTER 8.04 AND SAN JOSÉ CITY CHARTER §809

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The Independent Police Auditor shall have the following powers and duties:

- (a) Review Police Department investigations of complaints against police officers to determine if the investigation was complete, thorough, objective and fair.
- (b) Make recommendations with regard to Police Department policies and procedures based on the Independent Police Auditor's review of investigations of complaints against police officers.
- (c) Conduct public outreach to educate the community on the role of the Independent Police Auditor and to assist the community with the process and procedures for investigation of complaints against police officers.

*Added at election November 5, 1996.*

#### **§ 809.1. Independent Police Auditor; Power Of Appointment**

- (a) The Independent Police Auditor may appoint and prescribe the duties of the professional and technical employees employed in the Office of the Independent Police Auditor. Such appointed professional and technical employees shall serve in unclassified positions at the pleasure of the Independent Police Auditor. The Council shall determine whether a particular employee is a "professional" or "technical" employee who may be appointed by the Independent Police Auditor pursuant to these Subsections.
- (b) In addition, subject to the Civil Service provisions of this Charter and of any Civil Service Rules adopted pursuant thereto, the Independent Police Auditor shall appoint all clerical employees employed in the Office of the Independent Police Auditor, and when the Independent Police Auditor deems it necessary for the good of the service he or she may, subject to the above-mentioned limitations, suspend without pay, demote, discharge, remove or discipline any such employee whom he or she is empowered to appoint.
- (c) Neither the Council nor any of its members nor the Mayor shall in any manner dictate the appointment or removal of any such officer or employee whom the Independent Police Auditor is empowered to appoint, but the Council may express its views and fully and freely discuss with the Independent Police Auditor anything pertaining to the appointment and removal of such officers and employees.

*Added at election November 5, 1996.*

## APPENDIX B

### CALIFORNIA PENAL CODE §832.5 AND §832.7

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#### **§ 832.5. Citizen's complaints against personnel; investigation; retention and maintenance of records; removal of complaints; access to records**

- (a)
  - (1) Each department or agency in this state that employs peace officers shall establish a procedure to investigate complaints by members of the public against the personnel of these departments or agencies, and shall make a written description of the procedure available to the public.
  - (2) Each department or agency that employs custodial officers, as defined in Section 831.5, may establish a procedure to investigate complaints by members of the public against those custodial officers employed by these departments or agencies, provided however, that any procedure so established shall comply with the provisions of this section and with the provisions of Section 832.
- (b) Complaints and any reports or findings relating to these complaints shall be retained for a period of at least five years. All complaints retained pursuant to this subdivision may be maintained either in the peace or custodial officer's general personnel file or in a separate file designated by the department or agency as provided by department or agency policy, in accordance with all applicable requirements of law. However, prior to any official determination regarding promotion, transfer, or disciplinary action by an officer's employing department or agency, the complaints described by subdivision (c) shall be removed from the officer's general personnel file and placed in separate file designated by the department or agency, in accordance with all applicable requirements of law.
- (c) Complaints by members of the public that are determined by the peace or custodial officer's employing agency to be frivolous, as defined in Section 128.5 of the Code of Civil Procedure, or unfounded or exonerated, or any portion of a complaint that is determined to be frivolous, unfounded, or exonerated, shall not be maintained in that officer's general personnel file. However, these complaints shall be retained in other, separate files that shall be deemed personnel records for purposes of the California Public Records Act (Chapter 3.5 commencing with Section 6250) of Division 7 of Title 1 of the Government Code) and Section 1043 of the Evidence Code.
  - (1) Management of the peace or custodial officer's employing agency shall have access to the files described in this subdivision.
  - (2) Management of the peace or custodial officer's employing agency shall not use the complaints contained in these separate files for punitive or promotional purposes except as permitted by subdivision (f) of Section 3304 of the Government Code.
  - (3) Management of the peace or custodial officer's employing agency may identify any officer who is subject to the complaints maintained in these files which require counseling or additional training. However, if a complaint is removed from the officer's personnel file, any reference in the personnel file to the complaint or to a separate file shall be deleted.
- (d) As used in this section, the following definitions apply:
  - (1) "General personnel file" means the file maintained by the agency containing the primary records specific to each peace or custodial officer's employment, including evaluations, assignments, status changes, and imposed discipline.
  - (2) "Unfounded" means that the investigation clearly established that the allegation is not true.

## APPENDIX B

### CALIFORNIA PENAL CODE §832.5 AND §832.7

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- (3) “Exonerated” means that the investigation clearly established that the actions of the peace or custodial officer that formed the basis for the complaint are not violations of law or department policy.

### CALIFORNIA PENAL CODE §832.7

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#### **§ 832.7. Confidentiality of peace officer records: Exceptions**

- (a) Peace officer or custodial officer personnel records and records maintained by any state or local agency pursuant to Section 832.5, or information obtained from these records, are confidential and shall not be disclosed in any criminal or civil proceeding except by discovery pursuant to Sections 1043 and 1046 of the Evidence Code. This section shall not apply to investigations or proceedings concerning the conduct of peace officers or custodial officers, or an agency or department that employs those officers, conducted by a grand jury, a district attorney’s office, or the Attorney General’s office.
- (b) Notwithstanding subdivision (a), a department or agency shall release to the complaining party a copy of his or her own statements at the time the complaint is filed.
- (c) Notwithstanding subdivision (a), a department or agency that employs peace or custodial officers may disseminate data regarding the number, type, or disposition of complaints (sustained, not sustained, exonerated, or unfounded) made against its officers if that information is in a form which does not identify the individuals involved.
- (d) Notwithstanding subdivision (a), a department or agency that employs peace or custodial officers may release factual information concerning a disciplinary investigation if the officer who is the subject of the disciplinary investigation, or the officer’s agent or representative, publicly makes a statement he or she knows to be false concerning the investigation or the imposition of disciplinary action. Information may not be disclosed by the peace or custodial officer’s employer unless the false statement was published by an established medium of communication, such as television, radio, or a newspaper. Disclosure of factual information by the employing agency pursuant to this subdivision is limited to facts contained in the officer’s personnel file concerning the disciplinary investigation or imposition of disciplinary action that specifically refute the false statements made public by the peace or custodial officer or his or her agent or representative.
- (e)
  - (1) The department or agency shall provide written notification to the complaining party of the disposition of the complaint within 30 days of the disposition.
  - (2) The notification described in this subdivision shall not be conclusive or binding or admissible as evidence in any separate or subsequent action or proceeding brought before an arbitrator, court, or judge of this state or the United States.
- (f) Nothing in this section shall affect the discovery or disclosure of information contained in a peace or custodial officer’s personnel file pursuant to Section 1043 of the Evidence Code.

## **APPENDIX C**

# **NATIONAL ASSOCIATION FOR CIVILIAN OVERSIGHT OF LAW ENFORCEMENT CODE OF ETHICS (CODE)**

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### **Preamble**

Civilian oversight practitioners have a unique role as public servants overseeing law enforcement agencies. The community, government, and law enforcement have entrusted them to conduct their work in a professional, fair and impartial manner. They earn this trust through a firm commitment to the public good, the mission of their agency, and to the ethical and professional standards described herein.

The standards in the Code are intended to be of general application. It is recognized, however, that the practice of civilian oversight varies among jurisdictions and agencies, and additional standards may be necessary. The spirit of these ethical and professional standards should guide the civilian oversight practitioner in adapting to individual circumstances, and in promoting public trust, integrity and transparency.

### **Personal Integrity**

Demonstrate the highest standards of personal integrity, commitment, truthfulness, and fortitude in order to inspire trust among your stakeholders, and to set an example for others. Avoid conflicts of interest. Conduct yourself in a fair and impartial manner and recuse yourself or personnel within your agency when significant conflict of interest arises. Do not accept gifts, gratuities or favors that could compromise your impartiality and independence.

### **Independent and Thorough Oversight**

Conduct investigations, audits, evaluations and reviews with diligence, an open and questioning mind, integrity, objectivity and fairness, in a timely manner. Rigorously test the accuracy and reliability of information from all sources. Present the facts and findings without regard to personal beliefs or concern for personal, professional or political consequences.

### **Transparency and Confidentiality**

Conduct oversight activities openly and transparently providing regular reports and analysis of your activities, and explanations of your procedures and practices to as wide an audience as possible. Maintain the confidentiality of information that cannot be disclosed and protect the security of confidential records.

### **Respectful and Unbiased Treatment**

Treat all individuals with dignity and respect, and without preference or discrimination including but not limited to the following protected classes: age, ethnicity, culture, race, disability, gender, religion, sexual orientation, socioeconomic status or political beliefs.

### **Outreach and Relationships with Stakeholders**

Disseminate information and conduct outreach activity in the communities that you serve. Pursue open, candid, and non-defensive dialog with your stakeholders. Educate and learn from the community.

### **Agency Self-examination and Commitment to Policy Review**

Seek continuous improvement in the effectiveness of your oversight agency, the law enforcement agency it works with, and their relations with the communities they serve. Gauge your effectiveness through evaluation and analysis of your work product. Emphasize policy review aimed at substantive organizational reforms that advance law enforcement accountability and performance.

### **Professional Excellence**

Seek professional development to ensure competence. Acquire the necessary knowledge and understanding of the policies, procedures, and practices of the law enforcement agency you oversee. Keep informed of current legal, professional and social issues that affect the community, the law enforcement agency, and your oversight agency.

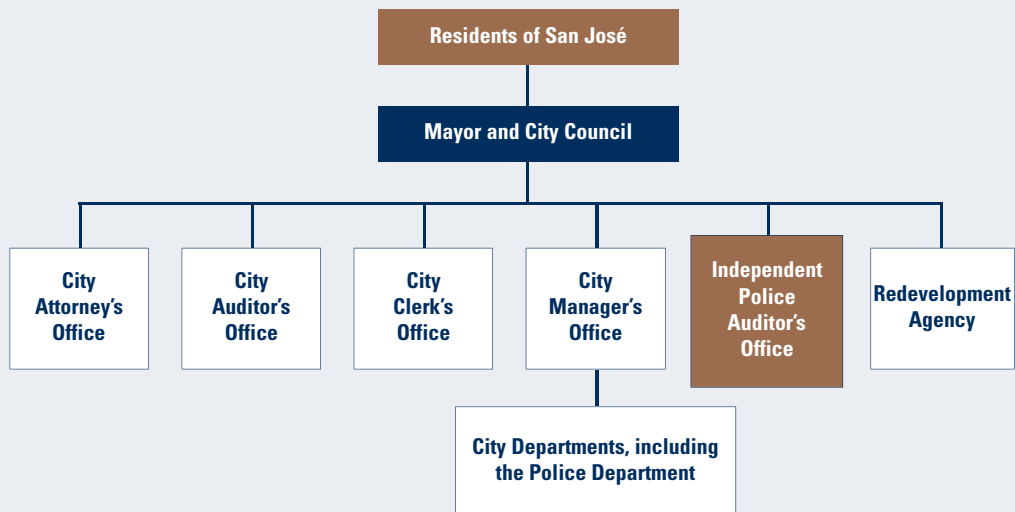
### **Primary Obligation to the Community**

At all times, place your obligation to the community, duty to uphold the law and to the goals and objectives of your agency above your personal self-interest.

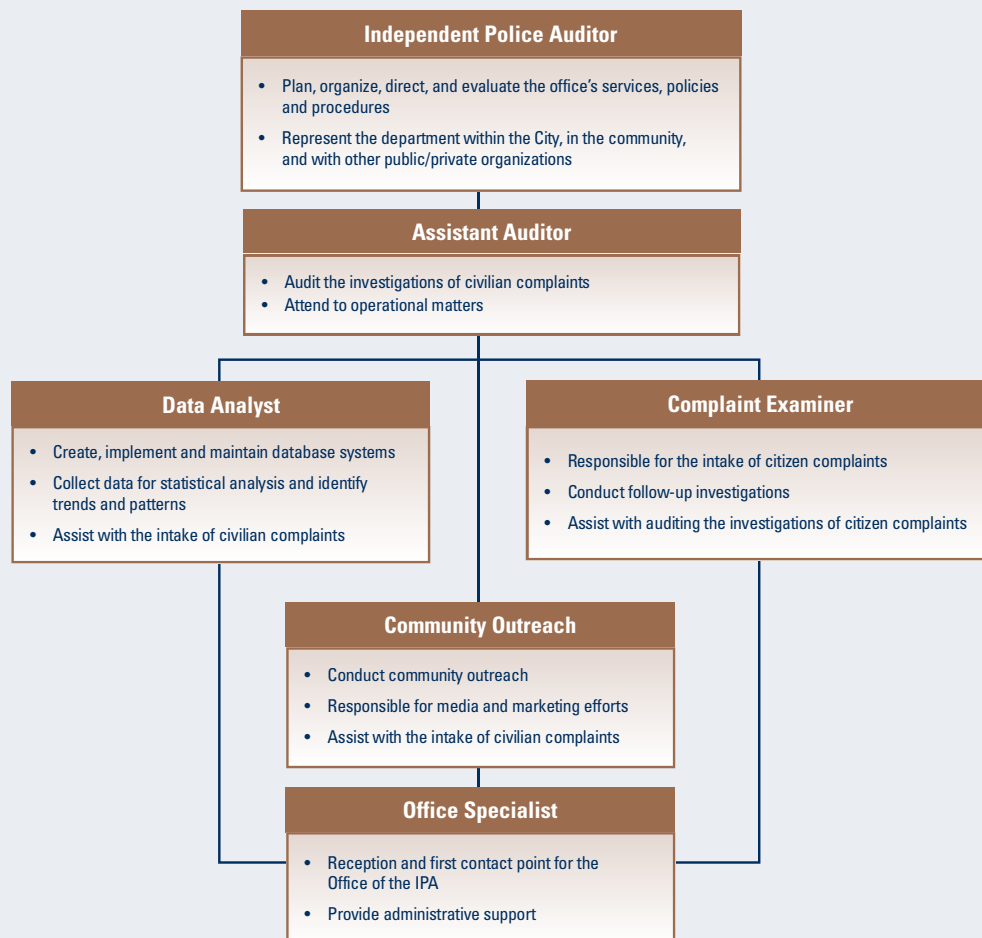


## APPENDIX D

### CITY OF SAN JOSÉ STRUCTURE



### OFFICE OF THE INDEPENDENT POLICE AUDITOR STRUCTURE



## APPENDIX E

### INDEPENDENT POLICE AUDITOR RECOMMENDATIONS

| DATE OF REPORT          | RECOMMENDATIONS   | SJPD RESPONSES | RESOLUTION PERIOD                                  |
|-------------------------|---|----------------|--|
| 1993 1st Quarter Report | Create a new system for the classification of complaints.   | Adopted        | 1st Quarter, 2nd Quarter, and 1994 Year End Report |
|                         | Standardize the definition of Procedural and Informal Complaints.   | Adopted        | 2nd Quarter and 1994 Year End Report               |
|                         | Apply Intervention Counseling to all types of complaints.   | Adopted        | 2nd Quarter and 1994 Year End Report               |
|                         | Establish procedures to address potential bias between Internal Affairs Investigators and complainants and subject officers.  | Adopted        | 2nd Quarter and 1994 Year End Report               |
|                         | Enact policy to ensure objectivity in the Intake of citizen complaints.   | Adopted        | 2nd Quarter and 1994 Year End Report               |
| 1994 3rd Quarter Report | Establish a timetable with goals in which to classify and investigate complaints.   | Adopted        | 1994 Year End Report                               |
|                         | Implement a citizen "Onlooker Policy" that addresses a person's right to witness a police incident.   | Adopted        | 1995 Mid-Year Report                               |
|                         | Standardize the way all investigations are written by IA personnel.   | Adopted        | 1994 Year End Report                               |
|                         | Provide report writing training in "Drunk in Public" cases to include the basis for the arrest. Reports are to be retained on file.   | Adopted        | 1994 Year End Report                               |
|                         | Provide chemical testing for "Drunk in Public" cases to verify if the person was in fact intoxicated.   | Not Adopted    |  |
|                         | Send minor complaints to the Bureau of Field Operations to expedite investigations.   | Adopted        | 1994 Year End Report                               |
|                         |   |                |  |
| 1994 Year End Report    | Establish procedures to insure neutrality in the classification of complaints.  | Adopted        | 1994 Year End Report                               |
|                         | Interview complainants and witnesses within three months of the initiation of a complaint.  | Adopted        | 1994 Year End Report                               |
|                         | Contact complainants at regular intervals through updates and closing letters.  | Adopted        | 1994 Year End Report                               |
|                         | Provide a copy of all SJPD reports relevant to complaint to the Police Auditor.   | Adopted        | 1994 Year End Report                               |
|                         | Require written authorization before conducting a search of a home based on consent.  | Not Adopted    |  |
|                         | Enact policy to require that, in cases where an officer's use of force caused great bodily injury, supervisors collect evidence and conduct an investigation into the need for the officer to use such force. | Adopted        | 1995 Year End Report                               |
|                         | Ensure that handcuffs are double locked to prevent wrist injuries.  | Adopted        | 1994 Year End Report                               |
|                         | Write the complainant's statement in addition to tape recording and provide a copy to the complainant.  | Adopted        | 1994 Year End Report                               |
|                         | Improve IA investigator's interpersonal skills in interacting with complainants.  | Adopted        | 1994 Year End Report                               |
|                         | Handle complaints classified as Command Review through counseling by the Field Supervisor and contact the complainant (where requested).  | Adopted        | 1994 Year End Report                               |
| 1995 Mid-Year Report    | Revise letters sent to complainants to include information about the IPA's role.  | Adopted        | 1994 Year End Report                               |
|                         | Maintain a central log of all public contacts for tracking purposes and to reduce the number of complaints that are lost or misplaced.  | Adopted        | 1995 Year End Report                               |
|                         | Obtain additional office space for IA so that complainants are interviewed in private.  | Adopted        | 1997 Year End Report                               |
|                         | Require the Police Department to offer complainants a choice to file complaints at either IA or IPA.  | Adopted        | 1995 Year End Report                               |
|                         | Implement policy to standardize the format used in subject and witness officer interviews.  | Adopted        | 1995 Year End Report                               |
| 1995 Year End Report    | Create policy to require closer scrutiny when conducting strip searches for misdemeanor arrests.  | Adopted        | 1995 Year End Report                               |
|                         | Revise Off-Duty Employment Practices to provide accountability of the type and number of hours worked by officers off duty.   | Adopted        | 1997 Year End Report                               |
| 1996 Mid-Year Report    | Connect IPA to City of San José's internet network.   | Adopted        | 1997 Year End Report                               |
|                         | Conduct preliminary investigation of complaints closed because they lack a signed Boland Admonishment to determine the seriousness of the allegations.  | Adopted        | 1996 Mid-Year Report                               |
|                         | Retain the name of the subject officer where a Boland Admonishment is not signed (but need not place in personnel file).  | Not Adopted    |  |
|                         | Require complaint classification to appropriately reflect the nature of the complaint.  | Adopted        | 1996 Mid-Year Report                               |



## APPENDIX E

### INDEPENDENT POLICE AUDITOR RECOMMENDATIONS

| DATE OF REPORT       | RECOMMENDATIONS   | SJPD RESPONSES                      | RESOLUTION PERIOD    |
|----------------------|---|-------------------------------------|----------------------|
|                      | Design and implement a new computer database system that links the IA and IPA on real time.   | Adopted                             | 1996 Mid-Year Report |
| 1996 Year End Report | Implement a process to respond to citizen's requesting an officer's identification.   | Adopted                             | 1997 Year End Report |
|                      | Establish Class I and Class II Use of Force type of complaints.   | Adopted                             | 1996 Year End Report |
|                      | Complete Class I Use of Force investigations within 180 days  | Adopted                             | 1996 Year End Report |
|                      | Complete all investigations of citizen complaints within 365 days   | Adopted                             | 1996 Year End Report |
|                      | Request that the City Attorney issue an opinion clarifying the IPA's authority to audit DI cases with a nexus to a citizen.   | Adopted                             | 1997 Year End Report |
| 1997 Year End Report | Require that officers identify themselves in writing when requested.  | Adopted                             | 1998 Year End Report |
|                      | When forcibly taking a blood specimen from an uncooperative suspect, do so in an accepted medical environment, according to accepted medical practices and without the use of excessive force.  | Adopted                             | 1998 Year End Report |
|                      | All complaints not covered under a Cardoza exception should be investigated by the IA and reviewed by the Chain of Command within 10 months, allowing the IPA enough time to request additional investigation, if needed.   | Adopted                             | 1998 Year End Report |
|                      | Time limits and a reliable tracking system should be implemented in every bureau and City department involved with reviewing a citizen complaint.   | Adopted                             | 1998 Year End Report |
| 1998 Year End Report | Expand the IPA jurisdiction to review all officer-involved shootings even if a complaint is not filed.  | Adopted                             | 1999 Year End Report |
| 1999 Year End Report | Request the City Council to authorize added staff for the IPA, to increase communication and personal contact with individual complaints and increase community outreach.   | Adopted                             | 2000 Year End Report |
|                      | Recommended that the City Council grant to the Internal Affairs Investigators subpoena power to compel the attendance of civilian witnesses and to compel the production of documentary or physical evidence.   | Adopted                             | 2000 Year End Report |
|                      | Amend the Municipal Code to define a citizen complaint audit and clarify that an audit includes examining physical evidence and follow up contact with complainants and witnesses.  | Not Adopted                         |                      |
|                      | It is recommended that the SJPD explore the feasibility of implementing a voluntary mediation program within the next six months.   | Adopted                             | 2000 Year End Report |
|                      | It is recommended that the SJPD design a training course focused specifically on improving day-to-day verbal communications for officers to use in interacting with the public.   | Adopted                             | 2000 Year End Report |
|                      | It is recommended that in cases where the police erred, i.e. the wrong house was searched, an explanation and/or apology be given as soon as possible, preferably at the onset.   | Adopted                             | 2000 Year End Report |
|                      | It is recommended that motorists be told the reason for the enforcement action such as why s/he was stopped, searched, and/or detained as soon as possible and preferable at the onset.   | Adopted                             | 2000 Year End Report |
|                      | It is recommended that the SJPD formalize a process whereby an officer is assigned to be the contact person or liaison to family members of people that were killed or died in police custody. This will assist the family in obtaining necessary but non-confidential information.   | Adopted in practice only            | 2000 Year End Report |
| 2000 Year End Report | To assure the public that it is safe to file complaints, the Chief of Police should create a policy to prohibit actual or attempts to threaten, intimidate, mislead, or harass potential or actual complainants and/or witnesses.   | Adopted                             | 2001 Year End Report |
|                      | The Chief of Police should include in all citizen complaint printed materials wording that clearly states, <i>"Retaliation against complainants is prohibited. The Chief of Police will not tolerate retaliation, and immediate action will be taken if an officer retaliates against a complainant or witness directly or indirectly,"</i> or similar words that emphasize the Chief's position. | Adopted                             | 2001 Year End Report |
|                      | The San José Police Department Duty Manual does not include a comprehensive Whistleblower policy. By incorporating federal Whistleblower guidelines, the Chief of Police should create a comprehensive Whistle Blower policy for the San José Police Department.  | Not Adopted but adopted in practice | 2001 Year End Report |

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| DATE OF REPORT       | RECOMMENDATIONS  | SJPD RESPONSES | RESOLUTION PERIOD    |
|----------------------|--|----------------|----------------------|
| 2000 Year End Report | The Chief of Police should continue to develop Ethics and Integrity Training to reflect and align police practices with ethical standards expected by the citizens of San José.  | Adopted        | 2001 Year End Report |
|                      | The Chief of Police should expand the fields in the racial profiling data collection to determine how an individual who has been stopped by the police was treated during the contact, i.e. was a search conducted. The data should include search information, the factual basis for the stop and action taken by the police officer as a result of the stop. | Not Adopted    |                      |
|                      | Develop a uniform definition of and process for tracking all "Racial Profiling" allegations in all instances where the complainant alleges that his/her vehicle stop or police contact was racially motivated.   | Adopted        | 2001 Year End Report |
|                      | The San José Police Department should expand the platform of the database used by the Internal Affairs Unit to facilitate the recording, tracking, and analysis of "Racial Profiling" and all other types of citizen complaints.   | In progress    | 2001 Year End Report |
|                      | The San José Police Department's Internal Affairs Unit should formally investigate allegations of officers refusing to identify themselves under an Improper Procedure allegation.   | Adopted        | 2001 Year End Report |
|                      | Continue to identify alternate, less lethal weapons, and make them more readily accessible.  | Adopted        | 2001 Year End Report |
|                      | Provide specialized training in handling suspects armed with non-automatic projectile weapons.   | Adopted        | 2001 Year End Report |
|                      | The Crisis Incident Response Team's presence at the scene is very important. Continue to provide special training in identifying and handling suspects with history of mental illness.   | Adopted        | 2001 Year End Report |
|                      | Increase recruiting efforts to hire more officers with bilingual skills. Examine the current strategies and marketing material used for recruiting.  | Adopted        | 2001 Year End Report |
|                      | The Disciplinary Review Panel, which determines if a complaint should be sustained and the type of discipline to impose, should document the basis for their findings to enable the IPA to conduct an audit of this phase of a citizen complaint investigation.  | Not Adopted    |                      |
| 2001 Year End Report | A study should be conducted to assess the feasibility of expanding the front lobby to alleviate the crowded conditions that exist.   | Adopted        | 2002 Year End Report |
|                      | A separate waiting area should be developed for designated services such as sex offenders waiting to register, criminals waiting to self-surrender, and other people that would pose a threat to the safety of others waiting in the lobby area of the main police station.  | Not Adopted    |                      |
|                      | An interview room should be made available for desk officers to obtain statements from walk-in victims and/or witnesses of crimes that affords privacy.  | Adopted        | 2002 Year End Report |
|                      | Additional courtesy telephones should be installed in the Information Center.  | Adopted        | 2002 Year End Report |
|                      | Monitors should be installed in the lobby of the San José Police Station displaying information such as activities, services, and meetings taking place in the Police Administration Building.   | Pending        |                      |
|                      | Access to public restrooms should be made available to the public from within the San José Police Station lobby. This would eliminate the requirement to sign-in with desk officers, go through the security gate, and provide access to restricted areas of the police department.  | Not Adopted    |                      |
|                      | A receptionist should be placed in the San José Police Station lobby to provide assistance and information to the general public.  | Pending        |                      |
|                      | Customer service training should be developed and provided to officers assigned as desk officers working at the Information Center located in the lobby of the SJPD.   | Adopted        | 2002 Year End Report |
|                      | Information Center Sergeants should have the front desk as their primary responsibility and they should be provided office space where they can monitor the activities of the Information Center.  | Adopted        | 2002 Year End Report |
|                      | The Chief of Police should implement incentives to attract officers to work at the Information Center.   | Pending        |                      |

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### INDEPENDENT POLICE AUDITOR RECOMMENDATIONS

| DATE OF REPORT       | RECOMMENDATIONS  | SJPD RESPONSES      | RESOLUTION PERIOD    |
|----------------------|--|---------------------|----------------------|
|                      | Include in police job descriptions and recruiting material those skills necessary to effectively implement community policing such as communication, conflict resolutions, and interpersonal skills.   | Adopted             | 2002 Year End Report |
|                      | Design and implement recruiting strategies that depict and address family related issues.  | Adopted             | 2002 Year End Report |
|                      | Revise the policies governing transfer opportunities for SJPD sergeants to require that openings be posted, and that the application and selection process, provide all candidates an equal opportunity for the assignment.  | Adopted             | 2002 Year End Report |
|                      | Continue to develop and provide training in communication and interpersonal skills as ongoing CPT.   | Adopted             | 2002 Year End Report |
|                      | Train all SJPD staff members, especially those who are in positions of providing information to the public, about the citizen complaint process, the functions of the IPA and IA Unit, and where a complaint can be filed.   | Adopted             | 2002 Year End Report |
|                      | The SJPD should compile vehicle stop data on an annual basis so that a comparative analysis can be made from year to year.   | Adopted             | 2002 Year End Report |
|                      | The Chief of Police should expand the fields for data collection to determine how an individual who has been stopped by the police was treated during the contact, i.e. was a search conducted. The data should include search information, the factual basis for the stop and action taken by the police officer as a result of the stop.   | Renewed and Adopted | 2002 Year End Report |
| 2002 Mid-Year Report | Complete the investigation of all citizen complaints within six months.  | Not Adopted         |                      |
| 2002 Year End Report | It is recommended that the Chief of Police continue to provide Intervention Counseling for subject officers meeting a set criterion.   | Adopted             | 2003 Year End Report |
|                      | It is recommended that the Chief of Police implement procedures to ensure that officers attending Intervention Counseling are well informed about the early warning system and Intervention Counseling prior to participating.   | Adopted             | 2003 Year End Report |
|                      | It is recommended that the Chief of Police direct the Command staff to factor an officer's work assignment and level of proactive policing as part of the discussion held during the intervention counseling session.  | Adopted             | 2003 Year End Report |
|                      | It is recommended that the Chief of Police direct the Command staff to incorporate discussion about the allegations and findings of the officer's complaint history to determine if a pattern exists.  | Adopted             | 2003 Year End Report |
|                      | It is recommended that the Chief of Police upgrade the SJPD's early warning system to include other indicators such as civil claims and lawsuits.  | Not Adopted         |                      |
|                      | It is recommended that the Chief of Police in conjunction with the City Manager develop a written policy that addresses the procedure to follow when serious misconduct allegations are filed against top ranking SJPD officers.   | Adopted             | 2003 Year End Report |
| 2003 Mid-Year Report | A written policy should be drafted and implemented that designates personnel whose primary focus would be to serve as the liaison to the family of the person injured or killed as the result of an officer-involved shooting.   | Adopted             | 2003 Year End Report |
|                      | The San José Police Department (SJPD) should improve dissemination of information to the public by developing and providing written materials that describe the process, agencies and general information that address frequently asked questions about officer-involved shootings or fatal incidents involving public safety officers.  | Adopted             | 2003 Year End Report |
|                      | The SJPD should prepare an annual report detailing the work of the Officer-Involved Shooting Review Panel and any new recommendations/policies/ or findings.   | Adopted             | 2003 Year End Report |
|                      | The SJPD should refrain from making any statements that appear to predetermine the outcome of the investigation or unnecessarily place the injured or deceased person in a negative light.   | Adopted             | 2003 Year End Report |
|                      | The IPA should be part of the roll-out team to the scene of an officer-involved shooting.  | Amended and Adopted | 2004 Year End Report |
|                      | <b>Amended To:</b> The IPA will be notified immediately after an officer-involved shooting by the Internal Affairs Commander. The IPA may respond to the scene of the officer-involved shooting and contact the Internal Affairs Commander at the outer perimeter of the crime scene. On-scene personnel will then brief the IPA and Internal Affairs Commander as to the details of the incident. |                     |                      |

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| DATE OF REPORT       | RECOMMENDATIONS  | SJPD RESPONSES      | RESOLUTION PERIOD  |
|----------------------|--|---------------------|--|
|                      | <p>The IPA's review of officer-involved shootings, where no citizen complaint is filed, should be as thorough as its review of officer-involved shootings where a citizen complaint is filed and should mirror the oversight of citizen complaints.</p> <p><b>Amended To:</b> The IPA will be provided with a copy of the Internal Affairs administrative investigation document of the officer-involved shooting for auditing purposes as soon as practical after the criminal case has been concluded, but prior to the closing of the administrative investigation. The IPA will coordinate outreach efforts immediately after an officer-involved shooting incident and the SJPD will ensure that it participates in these forums.</p>     | Amended and Adopted | 2004 Year End Report   |
|                      | <p>The San José Municipal Code should be amended to include the IPA on the list of council appointees authorized to enter into contractual agreements.</p> <p><b>Amended To:</b> The City Manager or the City Attorney as the case may be, will cooperate with the IPA to utilize their respective contracting authority to assist the IPA in obtaining expert consultants for purposes of training, and not for the purpose of reviewing any specific complaint. In the event of a disagreement, or the need for services that cost in excess of \$100,000, the request may be referred to the City Council for decision. This agreement will be evaluated after one year to determine if the IPA's needs are being adequately addressed.</p> | Amended and Adopted | 2004 Year End Report   |
| 2004 Year End Report | <p>The IPA supports continued tracking of TASER use by the SJPD, ongoing analysis of updated information about the use of TASERs, and recommends continued reporting of TASER use by SJPD officers.</p>  | Adopted             | 2005 Year End Report   |
|                      | <p>The IPA and Internal Affairs (IA) should revise intake procedures to comply with California Penal Code §832.7, which requires agencies receiving citizen complaints to provide complainants with a copy of their statements at the time the complaint is filed.</p>   | Adopted             | 2005 Year End Report   |
| 2005 Mid-Year Report | <p>The IPA should be issued a copy of all Homicide reports and other documents provided to Internal Affairs (IA) in officer-involved shooting cases. The IPA will secure the reports in a locked file and return them to the SJPD after all analysis is completed.</p>   | Adopted             | 2005 Year End Report   |
|                      | <p>That the SJPD establish written guidelines for TASER use in the Use of Force chapter of the Duty Manual.</p> <p><b>Amended To:</b> The TASER Usage Guidelines presented to the City Council on November 29, 2005 by the SJPD will be issued to all officers as a Training Bulletin that will become part of the training curriculum. The TASER guidelines will be binding on officers and they will be held accountable to them as they are to policies in the SJPD Duty Manual.</p>  | Amended and Adopted | 2005 Year End Report   |
| 2005 Year End Report | <p>That the SJPD establish an expanded shooting at vehicles policy.</p> <p><b>Amended To:</b> The SJPD staff is directed to consider establishing an expanded Shooting at Vehicles Policy and report back to the City Council.</p>   | Amended and Adopted | 2005 Year End Report<br>Policy change implemented April 2007 |
|                      | <p>That the SJPD continue to train officers to wait for backup, when practical, in situations where there are reasonable objective indicators that the situation could escalate to violence.</p>   | Adopted             | 2005 Year End Report   |